

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

**BRIEF OF 31 FORMER FEDERAL JUDGES AS
AMICI CURIAE IN SUPPORT OF PETITIONERS
IN NO. 24-1287 AND RESPONDENTS IN NO. 25-250**

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IDENTITY AND INTEREST OF AMICI CURIAE¹

Amici are 31 former federal judges appointed by presidents of both major political parties. Collectively they served for decades on district courts and courts of appeal across the country. *See* Appendix I. In their judicial capacities, amici confronted questions concerning the scope of constitutional powers and the separation of powers among the branches of government. They have a deep understanding of the ability of federal judges to discern and apply standards necessary to the resolution of constitutional questions.

Although amici no longer serve in an official judicial capacity, they retain a continuing and abiding interest in preserving the independent role of the federal judiciary. They seek to ensure that the separation of powers is respected and that any delegation of legislative power to the President is subject to meaningful judicial review.

Amici's perspective is not shaped by any personal or institutional stake in the outcome of this litigation but rather by their dedication to the rule of law, and their firm belief that the federal courts play an essential role in protecting the values our founding fathers embedded in the Constitution.

1. Pursuant to this Court's Rule 37.6, amici state that no counsel for any party authored this brief in whole or in part. No entity or person, aside from amici curiae and their counsel on this brief, made any monetary contribution intended to fund the preparation or submission of this brief.

SUMMARY OF ARGUMENT

In the International Emergency Economic Powers Act (IEEPA) 50 U.S.C. § 1701 *et seq.*, Congress gave the President the power to “regulate . . . importation” when there exists an “unusual and extraordinary threat” as to which the President has declared a “national emergency.” President Trump has declared that national emergencies exist with respect to American trade deficits with foreign nations and unlawful drug trafficking. Based on these declared emergencies, the administration has implemented a new, world-wide tariff regime that drastically changes our structure of tariffs with virtually all the country’s trading partners.

The President’s actions raise several fundamental constitutional questions, two of which we address in this brief:

1. First, has Congress lawfully ceded to the President its Article I power to set tariffs?
2. Second, is the legality of the President’s actions beyond the scope of judicial review?

We note at the outset that under this court’s decision in *West Virginia v. Environmental Protection Agency*, 597 U.S. 697 (2022), the application of the “major questions” doctrine may well moot the first of these questions. The United States Court of Appeals for the Federal Circuit ruled that, as a matter of statutory construction, IEEPA’s reference to the President’s emergency power “to regulate . . . importation” does not authorize the broad-ranging tariff regime that President Trump has implemented. *V.O.S. Selections, Inc. v. Trump*, 149 F.4th 1312, 1331–32

(Fed. Cir. 2025). If, under the “major questions” doctrine or otherwise, this Court should reach the same conclusion, it would not have to reach the issues discussed in this brief. However, if this Court construes IEEPA as delegating to the President the unlimited power to set tariffs on all goods imported from all our trading partners, we urge the court to find this to be an unconstitutional transfer of legislative power. *See Marshall Field & Co. v. Clark*, 143 U.S. 649, 692 (1891) (“That Congress cannot delegate legislative power to the president is a principal universally recognized as vital to the integrity and maintenance of the system of government ordained by the [c]onstitution.”).

With respect to the second issue—whether the President’s declarations of “national emergencies” are subject to judicial review, this Court should reject the Solicitor General’s argument that courts lack the power to decide whether there were, in fact, “unusual and extraordinary” threats that justified the President’s use of the powers assertedly conferred by IEEPA. Gov. Br. 41–43. Giving the President the unreviewable authority to decide whether he may exercise emergency powers would be antithetical to the balance of powers that our founders established as the bedrock of the Constitution. Over the years, Congress has enacted numerous statutes conferring extraordinary power on the President in times of true national emergency. That power may be exercised only in the circumstances that Congress has authorized, and it is the province of the judicial branch to determine whether the President has gone beyond what the law allows. For this Court to rule that the President alone can exercise unlimited legislative powers without judicial review of a determination that a national emergency exists would give the President tyrannical powers. As

Alexander Hamilton observed in *THE FEDERALIST* No. 47, at 301 (Clinton Rossiter ed., 1961): “The accumulation of all powers, legislative, executive and judiciary, in the same hands, . . . may justly be pronounced the very definition of tyranny.”

ARGUMENT

I. Congress Cannot Constitutionally Cede Its Power to Set Tariffs to the President

The government argues here that IEPA’s grant of limited authority to the President to “regulate . . . importation” in certain emergencies amounted, in effect, to a decision by Congress to cede to the President its power to set tariffs on all products coming into this country from all nations. However, under Article I, Section 8 of the Constitution, Congress is given the power to “regulate commerce with foreign nations,” and it is only Congress that has the legislative power to “lay and collect Taxes Duties, Imposts and Excises.” As this Court declared in *Field*, 143 U.S. at 692: “That Congress cannot delegate legislative power to the president is a principle universally recognized as vital to the integrity and maintenance of the system of government ordained by the [c]onstitution.”

The historical and philosophical considerations that motivated the drafters of the Constitution to incorporate the separation of powers as a fundamental part of our constitutional government were thoroughly reviewed and explained by Justice Thomas in his concurring opinion in *Department of Transportation v. Association of American Railroads*, 575 U.S. 43 (2015). There is no need to repeat that analysis here, other than to note

his conclusion: “[D]evotion to the separation of powers is, in part, what supports our enduring conviction that the Vesting Clauses are exclusive and that the branch in which a power is vested may not give it up or otherwise reallocate it.” *Id.* at 74.

In this case the government urges the Court to uphold the transfer of total authority to set tariffs to the President. The Solicitor General argues that constitutional limitations “on Congress’s authority to delegate are ‘less stringent in cases where the entity exercising the delegated authority itself possesses independent authority over the subject matter.’” Gov. Br. 29 (quoting *United States v. Mazurie*, 419 U.S. 544, 556–57 (1975)). But the Constitution does *not* give the President “independent authority” over tariffs. The Constitution is specific: Under Article I, Section 7, only the House of Representatives has the authority to originate legislation to raise revenue, and under Article I, Section 8, Congress is given the power to “lay and collect Taxes, Duties, Imposts and Excises”

In economic terms, tariffs amount to a tax on imported goods paid by the citizens and businesses that purchase goods from abroad. Generally, tariffs generate conflicting interests among the states and even among different business segments within a state. Thus, unsurprisingly, the tariffs that the current President has imposed, and the retaliatory tariffs which they have provoked, have had and will have profound impacts on different states, and on different sectors of the economy within each state. Article I places the responsibility for resolving those conflicting interests in the people’s house, the House of Representatives, and Congress cannot cede that responsibility to the President.

While the government argues here that “this Court has long approved broad congressional delegations to the President to regulate international trade, including through tariffs,” Gov. Br. 29, the very cases on which the government relies contradict its argument. To be sure, under this Court’s cases Congress can delegate certain administrative functions to the executive branch with respect to the setting of tariffs. However, in *J. W. Hampton, Jr., & Co v. United States*, 276 U.S. 394, 409 (1928), Chief Justice Taft made clear that for a delegation to pass constitutional muster, Congress must “lay down by legislative act an intelligible principle to which the person or body to fix such rates is directed to conform.” Similarly, in *Field*, 143 U.S. at 692–93, the Court noted that “Congress itself prescribed, in advance, the duties to be levied, collected and paid, on sugar, molasses, coffee, tea or hides Nothing involving the expediency or the just operation of such legislation was left to the determination of the president.” Here by contrast, the IEEPA provides no standards to guide the president in determining the countries on which tariffs should be imposed, the goods that should be subject to a tariff, or the rate of such tariffs. According to President Trump, he can do whatever he wants when it comes to tariffs, imposing them (as he has) even on countries that do not contribute to America’s drug-trafficking problem and have no negative balance of payments with the United States. We respectfully submit that this is not the law. Under our Constitution, and its careful allocation and separation of powers, Congress cannot hand its tariff-setting authority over to the President lock, stock, and barrel, allowing him to aim it whenever, wherever, and however he pleases.

II. The President’s Declaration of National Emergencies Is Subject to Judicial Review

In proceedings below, the Court of International Trade found that the President could not invoke IEEPA because there was no “unusual and extraordinary” crisis that triggered the application of that statute. *V.O.S. Selections, Inc. v. United States*, 772 F. Supp. 3d 1350, 1370 (Ct. Int’l Trade 2025). That issue—the presence or absence of a national emergency as defined by the statute—was not addressed by the Court of Appeals for the Federal Circuit, which decided that IEEPA in any event did not authorize the President to implement his broad-ranging new tariff regime. If this Court were to hold that Congress could and did delegate its tariff-setting authority to the President pursuant to IEEPA, it (or presumably the lower courts on remand) would then have to determine whether the President’s exercise of emergency authority was consistent with the statute.

In his brief in this Court, the Solicitor General has argued that this Court cannot review the President’s determination that “unusual and extraordinary” circumstances justified his invocation of emergency powers because, among other reasons, “judges lack the institutional competence to determine when foreign affairs pose an unusual and extraordinary threat that requires an emergency response” Opening Brief for the Respondents in No. 24-1287 and the Petitioners in No. 25-250, *Learning Resources, Inc., et al. v. Trump*, No. 24-1287 (U.S. Sep. 19, 2025).

The implications of this argument are profound. Over the years, Congress has enacted numerous statutes that give special powers to the President in times of national emergencies. If the President can exercise those powers at any time solely by saying that such an emergency exists, the balance of powers so thoughtfully embedded in our Constitution will become dangerously unstable. Preserving and calibrating that balance is a core responsibility of courts generally, and this Court in particular. It has been true at least since this Court's decision in *Marbury v. Madison*, 5 U.S. 137, 177 (1803), that "[i]t is emphatically the province and duty of the judicial department to say what the law is."

Although he does not cite it by name, the Solicitor General is, in effect, arguing that the President's decision that there was an "unusual and extraordinary" threat is a non-justiciable "political question" under the principles set forth by this court in *Baker v. Carr*, 369 U.S. 186 (1962). The Solicitor General's reason for failing to mention *Baker* is obvious, for as then Judge Kavanaugh observed in his concurring opinion in *El-Shifa Pharmaceutical Industries Co. v. United States*, 607 F.3d 836, 855 (D.C. Cir. 2010):

The key point for purposes of my political question analysis is this: Plaintiffs do not allege that the Executive Branch violated the Constitution. Rather, plaintiffs allege that the Executive Branch violated congressionally enacted statutes that purportedly constrain the Executive. The Supreme Court has never applied the political question doctrine in cases involving statutory claims of this kind. As

Judge Edwards has correctly explained, the proper separation of powers question in this sort of statutory case is whether the statute as applied infringes on the President's exclusive, preclusive authority under Article II of the Constitution.

Congress, in this case, intended to grant the President extraordinary powers only where there was, in fact, an "unusual and extraordinary" threat. The question of whether the threat on which the President relied was "unusual and extraordinary" is a straightforward matter of statutory interpretation. This is the type of determination that federal judges make every day. Indeed, factual questions like these are far less complex than other questions routinely considered by federal judges, such as whether a particular action is "in restraint of trade" or whether a particular idea is patentable because it was not anticipated in "prior art."

The Solicitor General's argument that federal judges "lack the institutional competence" to determine whether a threat is "unusual and extraordinary" is baseless. A federal court, after hearing argument and evidence (including classified evidence received *ex parte* and *in camera* as necessary pursuant to § 1702(c) of IEEPA, can readily decide whether there has been "an unusual and extraordinary threat to the national security, foreign policy, or economy of the United States," which is a requirement for presidential action under IEEPA. Executive Order 14257, which promulgated most of the tariffs at issue in this case, was assertedly based on the President's determination that large and persistent annual U.S. trade deficits constituted an "unusual and

extraordinary threat” to the nation’s security and economy.

The question of whether existing trade deficits are “unusual and extraordinary” poses a fact issue well within the competence and everyday experience of federal judges. And the facts needed to assess if specific or general trade deficits are “unusual and extraordinary” are easily available. For over 100 years, the government has been collecting statistics on balance of payments and trade deficit issues as part of its regular course of business. Certainly, there is no dearth of data. The federal government collects data on trade deficits and the balance of payments primarily through agencies such as the United States Census Bureau and the United States Bureau of Economic Analysis. This data includes information on exports and imports and the overall balance of trade in goods and services, together with a broader analysis of payments statistics. Much of this data is reported monthly, and more detailed analysis is provided quarterly. Given this wealth of data, a judge would have little problem determining whether current deficits are “unusual” or “extraordinary.”

Federal courts also can assess if tariffs are needed to address an “unusual and extraordinary” national threat from drug trafficking, which is another basis for presidential action here. Courts deal every day with aspects of the drug trade, and there is a wealth of available information about the nature and extent of drug overdoses, drug seizures, the price of different illicit drugs, the routes by which they arrive in the United States, and the quantity of illegal drugs that arrive in the United States from individual foreign nations. A court could readily consider

the question of whether America's drug problem is truly "unusual and extraordinary," and whether the President in fact implemented tariffs to deal with the importation of drugs or for some other reason not authorized by IEEPA.

As this court observed in *Baker* "[d]eciding whether a matter has in any measure been committed by the Constitution to another branch of government, or whether the action of that branch exceeds whatever authority has been committed, is itself a delicate exercise in constitutional interpretation, and is a responsibility of this Court as ultimate interpreter of the Constitution." 369 U.S. at 211–12.

But where Congress cedes some authority to the President by statute, the meaning of the statute, and the boundaries of its application, are matters for courts to decide, because it is for the courts "to say what the law is." *Marbury*, 5 U.S. at 177. Even when the President has declared an "emergency," he cannot take unilateral action that is not authorized by the Constitution or by statute. The resulting questions of statutory and constitutional authority are for the judicial branch to decide, just as this Court did in *Youngstown Sheet & Tube Company v. Sawyer*, 343 U.S. 579 (1952). In that case, this Court did not hesitate to find that the President violated the Constitution when he declared a national emergency and used that emergency to take over steel mills. *Id.* at 589. In this case, the President has similarly exceeded his constitutional authority, and it is squarely within the judicial province for this Court to say so and to grant appropriate relief.

CONCLUSION

For the foregoing reasons the decision of the Court of Appeals for the Federal Circuit that the President did not have the authority to impose the tariffs should be affirmed.

Respectfully submitted,

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**APPENDIX — *AMICI* AND COURTS ON WHICH
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John Winslow Bissell, U.S. District Court for the District
of New Jersey

Michael Burrage, U.S. District Court for the Western,
Northern, & Eastern Districts of Oklahoma

Robert J. Cindrich, U.S. District Court for the Western
District of Pennsylvania

Andre M. Davis, U.S. District Court for the District of
Maryland & U.S. Court of Appeals for the Fourth Circuits

William F. Downes, U.S. District Court for the District
of Wyoming

Allyson K. Duncan, U.S. Court of Appeals for the Fourth
Circuit

Gary Allen Feess, U.S. District Court for the Central
District of California

Jeremy D. Fogel, U.S. District Court for the Northern
District of California

William Royal Furgeson Jr., U.S. District Court for the
Western District of Texas

Paul W. Grimm, U.S. District Court for the District of
Maryland

Andrew J. Guilford, U.S. District Court for the Central
District of California

Appendix

Thelton E. Henderson, U.S. District Court for the Northern District of California

Robert Harlan Henry, U.S. Court of Appeals for the Tenth Circuit

Richard J. Holwell, U.S. District Court for the Southern District of New York

John E. Jones III, U.S. District Court for the Middle District of Pennsylvania

John S. Martin Jr., U.S. District Court for the Southern District of New York

A. Howard Matz, U.S. District Court for the Central District of California

Richard B. McQuade Jr., U.S. District Court for the Northern District of Ohio

Paul R. Michel, U.S. Court of Appeals for the Federal Circuit

Liam O'Grady, U.S. District Court for the Eastern District of Virginia

Kathleen M. O'Malley, U.S. District Court for the Northern District of Ohio & U.S. Court of Appeals for the Federal Circuit

Layn R. Phillips, U.S. District Court for the Western District of Oklahoma

Appendix

Philip M. Pro, U.S. District Court for the District of Nevada

Shira A. Scheindlin, U.S. District Court for the Southern District of New York

Ursula M. Ungaro, U.S. District Court for the Southern District of Florida

Vaughn R. Walker, U.S. District Court for the Northern District of California

T. John Ward, U.S. District Court for the Eastern District of Texas

Alexander Williams Jr., U.S. District Court for the District of Maryland

Diane P. Wood, U.S. Court of Appeals for the Seventh Circuit

Thomas I. Vanaskie, U.S. District Court for the Middle District of Pennsylvania & U.S. Court of Appeals for the Third Circuit

Earl Leroy Yeakell III, U.S. District Court for the Western District of Texas