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 and On Writ of Certiorari to the United States Court of Appeals for the Federal Circuit

BRIEF OF CONSTITUTIONAL ACCOUNTABILITY CENTER 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*[1]

Constitutional Accountability Center (CAC) is a think tank and public interest law firm dedicated to fulfilling the progressive promise of the Constitution's text and history. CAC has a strong interest in ensuring that important federal statutes are interpreted in a manner consistent with their text and history. Accordingly, CAC has an interest in this case.

INTRODUCTION AND SUMMARY OF ARGUMENT

The International Emergency Economic Powers Act (IEEPA) gives the President enumerated powers "to deal with any unusual and extraordinary threat" to "the national security, foreign policy, or economy of the United States." 50 U.S.C. § 1701(a). Although the statute nowhere explicitly grants the authority to impose tariffs, President Trump did so anyway, arguing that IEEPA implicitly authorizes his actions.

In support of this claim, Professor Aditya Bamzai's *amicus* brief maintains that IEEPA incorporates presidential wartime authority that was recognized in nineteenth-century precedent, later codified in the Trading with the Enemy Act of 1917 (TWEA), subsequently retained through amendments that expanded the Act's scope beyond the war context, and finally transmitted intact to IEEPA. *See* Bamzai Br. 2-5.

Central to this theory is the idea that the President's power to prohibit trade entirely during wartime necessarily includes the so-called "lesser" power to

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[1] No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund its preparation or submission. No person other than *amicus* or its counsel made a monetary contribution to its preparation or submission.

permit trade on the condition of paying a duty or fee. *See id.* at 7-8. This "greater-includes-the-lesser reasoning," the brief contends, was recognized in the laws of war and in early American history: during the Mexican-American War, when President Polk permitted trade from occupied Mexican ports subject to duties; during the Civil War, when cotton trade with the South was permitted subject to fees; and during the Spanish-American War, when duties were levied on occupied territories. *Id.* at 7-15.

In this telling, the TWEA codified this understanding of the laws of war in 1917 and continued to confer the same authority on presidents even after it was amended in 1933 to extend its authorities from wartime to peacetime national emergencies. Further, because the TWEA was amended in 1941 to add the authority to regulate importation, and Congress included that authority in IEEPA in 1977, IEEPA necessarily confers the same implicit tariff authority that presidents enjoyed under the laws of war in the 1800s. *Id.* at 16-18, 21-21, 27-28.

This narrative collapses under scrutiny. First, far from demonstrating any consensus that a declaration of war delegated tariff authority to presidents, an examination of nineteenth-century history reveals fierce contestation over such power, and that the tariffs in question were ultimately justified by express congressional authorization or ratification. During the Mexican-American War, Congress formally repudiated President Polk's attempt to convert wartime blockade authority into tariff authority. A House select committee expressly rejected the argument that "the power to levy and collect money, as duties," could be "derived as a *minor* right to this right of blockade," explaining that President Polk's greater-includes-the-lesser argument conflated two distinct constitutional powers. H.R. Rep.

No. 30-119, at 5 (1849). This Court ultimately relied on *post hoc* congressional ratification to uphold the tariffs. *Cross v. Harrison*, 57 U.S. 164, 201 (1853).

This pattern continued in subsequent conflicts. The Civil War cotton fee survived only because Congress expressly authorized it. *Hamilton v. Dillin*, 88 U.S. 73, 92 (1874). And in resolving litigation concerning the Spanish-American War tariffs, this Court emphasized the limits on presidential tariff authority and invalidated the collection of duties that exceeded the scope of the declared war. *Lincoln v. United States*, 197 U.S. 419, 427-28 (1905).

Second, even accepting the premise that the TWEA in 1917 codified an accepted presidential wartime authority to impose tariffs, the question remains whether IEEPA confers that same authority on presidents during peacetime. History makes clear that it does not. The original TWEA was "strictly a war measure," grounded in constitutional war powers and international law principles recognizing that a state of war suspended normal commercial relationships. *See Stoehr v. Wallace*, 255 U.S. 239, 242 (1921). When Congress extended the TWEA to peacetime "national emergencies" in 1933 to allow President Roosevelt to address the domestic banking crisis, it detached the statute from its moorings in the federal government's war power and the laws of war. Moreover, the 1941 amendment to the TWEA, which added the critical language granting the authority to "regulate . . . importation," was enacted as a temporary wartime expedient immediately after Pearl Harbor—not a permanent expansion of peacetime presidential power.

The Bamzai brief argues that when the operative language, "regulate . . . importation," was added to the TWEA in 1941, it looked back to the supposed wartime tariff authority that predated the original TWEA

decades earlier, and that IEEPA's later adoption of this language retained the same authority unchanged. But Congress's bifurcation of IEEPA from the TWEA reflects a deliberate severing of peacetime emergency powers from their war powers origins. In 1977, Congress simultaneously repealed the TWEA outside wartime, while enacting IEEPA to grant narrower authorities during national emergencies short of war. As part of this process, Congress limited the powers granted in IEEPA compared with those granted in the TWEA—for instance, removing the authority to vest title to foreign property and limiting the President to freezing assets rather than seizing them. *Compare* 50 U.S.C. § 4305(b)(1) (TWEA), *with id.* § 1702(a)(1)(B) (IEEPA).

This bifurcated statutory structure and the deliberate narrowing of peacetime authorities demonstrate Congress's plan to create a more constrained statute—undermining any inference that Congress silently included the extraordinary power to impose tariffs within IEEPA's regulatory authorities.

ARGUMENT

I. When the TWEA Was Enacted in 1917, There Was No Consensus About the Existence or Scope of an Inherent Presidential Authority to Impose Tariffs During Wartime.

Contrary to the claim that pre-1917 precedents demonstrate an inherent presidential authority to impose tariffs during wars, the history is far more equivocal. Every imposition of presidential duties or fees in wartime generated significant constitutional controversy. Rather than clearly establishing that a declaration of war delegated tariff authority to presidents, these historical episodes reveal fierce contestation over the separation of powers that was never resolved.

A. The Mexican-American War

According to the Bamzai brief, President Polk's imposition of tariffs during the Mexican-American War provides evidence of a "prevailing position" that "a declaration of war delegated to the president the authority to condition trade with an enemy on payment of a fee or tax." Bamzai Br. 8. But the history does not support this assertion. The Mexican-American War tariffs provoked fierce constitutional objections and an express congressional rejection of the President's claimed powers. In cases arising from the tariffs, this Court's decisions either addressed different questions entirely or rested on congressional ratification of presidential actions.

During the war, President Polk lifted the blockades on occupied Mexican ports and reopened trade, subject to duties levied as "military contributions" to "defray[] the expenses of the war." Message to Congress, Mar. 31, 1847, Exec. Doc. No. 1, 30th Cong., 1st Sess. 561 (1847). Congress expressly rejected Polk's assertion of authority to impose the wartime duties absent congressional authorization. *See* Bamzai Br. 9-10. A House select committee report repudiated the constitutional theory underlying Polk's order—namely, "the assumption that all belligerent rights with which a state of war invests the nation may be rightfully exercised by [the president], after a general declaration of war, without any further legislation." H.R. Rep. No. 30-119, at 2.

The House committee's position rested on the separation of powers—specifically, the distinction between executive war powers and legislative taxing authority. While a "[b]lockade is a usual, ordinary means of executing the law declaring war," "[l]evying duties or imposts is exercising the power to make laws." *Id.* at 5. As the committee explained, these powers

represent categorically different types of authority. "The power of blockade is an incident of the power of capture and conquest" and constitutes a mode of "depriving the enemy of means of support and resistance." *Id.* In contrast, "the power to levy and collect money, as duties," cannot be "derived as a *minor* right to this right of blockade" because it serves the fundamentally different purpose of "operat[ing] to the enemy's *relief* by *letting in* the supply, instead of actually excluding it." *Id.* By rejecting the President's conflation of what it saw as two distinct powers, the committee expressly repudiated the principle that the so-called greater power to block trade completely included the so-called lesser power to impose tariffs or duties.

The committee further reasoned that Polk's actions went far beyond any defensible exercise of war powers. "To impose revenue laws upon any country, is the highest act of sovereignty." *Id.* While assuming *arguendo* that the President might have some authority "to levy 'contributions' upon the enemy, without the authority of Congress," the committee explained that Polk had done more than merely extract contributions from enemy property. *Id.* at 4. By imposing duties that were exacted from "our own citizens and neutrals," in addition to the enemy, the President "has usurped and exercised the power to 'lay and collect taxes, duties, imposts, and excises'" and "to 'regulate commerce.'" *Id.* at 5 (quoting U.S. Const. art. I, § 8).

When litigation surrounding the Polk tariffs reached this Court in two cases, neither decision clearly vindicated the President's claimed authority to impose duties absent congressional authorization. In *Fleming v. Page*, 50 U.S. 603 (1850), this Court addressed an entirely separate question: whether a Mexican port under U.S. military occupation was a foreign rather than a domestic port and therefore subject to

Congress's schedules of duties on foreign imports. *Id.* at 614. While this Court described the tariffs levied at the Mexican port as "a mode of exacting contributions from the enemy to support our army," *id.* at 616, this passing reference merely characterized the goal of the tariffs without addressing whether their authorization was constitutionally valid. Indeed, the parties did not present the constitutional question in *Fleming*, and the Court did not decide it, let alone vindicate Polk's position. To the contrary, this Court emphasized the limits of presidential war powers, observing that the duties and powers "conferred upon the President by the declaration of war" are "purely military" and do not extend "beyond the limits before assigned to them by the legislative power." *Id.* at 615.

Cross v. Harrison addressed the collection of duties in California during the transitional period following the end of the Mexican-American War. While this Court upheld the collections, its decision provides only limited support for unilateral presidential authority to impose wartime tariffs, as *Cross* ultimately relied upon congressional ratification to resolve any doubts about the tariffs' validity. This Court noted that "Congress has by two acts adopted and ratified all the acts of the government established in California upon the conquest of that territory, relative to the collection of imposts and tonnage from the commencement of the late war with Mexico." *Cross*, 57 U.S. at 201. This legislation, the Court held, "sanctions" and "affirms that [the government] had legal authority" to collect the duties. *Id.*

The *Cross* Court did, in passing, observe that "[n]o one can doubt" that the collection of duties was consistent with "the law of arms and the right of conquest." *Id.* at 190. But the Court treated the question presented in *Cross* as one of territorial governance:

whether existing federal revenue laws applied automatically to newly conquered territories. *See id.* at 196-200. Because the Court analyzed that question, and not the constitutional allocation of tariff authority between the political branches, it did not engage with the separation-of-powers concerns raised by the House committee about whether the President was improperly exercising Congress's taxing power.

Moreover, to the extent that the Court did, in conclusory language, suggest there was some presidential authority to impose wartime tariffs, it did so only where the President, as "commander-in-chief of the army and navy, authorized the military . . . forces in California to exercise the belligerent rights of a conqueror, and to form a civil government for the conquered country." *Id.* at 190. The duties in question were exacted solely "as military contributions for the support of the government, and of the army which had the conquest in possession." *Id.* This reference to the laws of war governing conquered territory does not support a general authority to impose tariffs in other contexts.

B. The Civil War

The second historical episode relied on by the Bamzai brief is President Lincoln's imposition during the Civil War of a fee for permits "to purchase cotton in any insurrectionary district, and to transport the same to a loyal State." *Hamilton*, 88 U.S. at 77 (quoting regulation issued in September 1863). But that fee rested on explicit congressional authorization, and this Court declined to decide whether it could have been imposed under presidential authority alone.

In 1861, Congress expressly authorized the President to "license and permit commercial intercourse" with insurrectionary states, directing that such

commerce "shall be conducted and carried on only in pursuance of rules and regulations prescribed by the Secretary of the Treasury." *Id.* at 88-89 (quoting Act of July 13, 1861, ch. 3, § 5, 12 Stat. 255, 257). The cotton fee at issue in *Hamilton* was imposed through a regulation issued by the Secretary of Treasury pursuant to this statutory delegation. *See id.* at 77.

In *Hamilton*, this Court rejected a constitutional challenge to the cotton fee, but not because the President possessed independent authority to condition trade on payment of fees in wartime. Instead, the Court concluded that the fees in question "were authorized by the act of July 13th, 1861," noting that "[t]here was nothing in this action of the President repugnant to, or not in conformity with, the act of 1861." *Id.* at 92, 94. The Court also determined that an 1864 statute "recognized and confirmed the regulations in question" by directing that "'all moneys arising . . . from fees collected under the rules and regulations'" be paid into the Treasury. *Id.* at 96 (quoting Act of July 2, 1864, ch. 225, 13 Stat. 375, 376). The Court deemed this provision "clearly an implied recognition and ratification of the regulations, so far as any ratification on the part of Congress may have been necessary to their validity." *Id.* at 97.

Because of this congressional authorization, the Court observed that "it is not now necessary to decide" whether "in the absence of Congressional action, the power of permitting partial intercourse with a public enemy may or may not be exercised by the President alone." *Id.* at 87. Accordingly, the Court's passing comment that "it would seem that little doubt could be raised on the subject," *id.*, is dicta. The Court had already determined that "a concurrence of both [executive and legislative powers] affords ample foundation for any regulations on the subject." *Id.* at 88.

Crucially, too, when *Hamilton* concluded that the imposition of the cotton fee was a proper use of "the war power," it referred to "the war power of the United States government"—not the President's power alone. *Id.* at 87. The Court explained that the federal government's war power "implied" the authority to impose conditions on trade with the enemy, but it immediately pivoted to analyzing the "concurrence" of legislative and executive action. *Id.* at 87-88. This framing reflects the Constitution's structure: while the federal government, as a whole, possesses the war power, the Constitution divides that power between Congress—which declares war, raises and supports armies, and regulates the armed forces—and the President, who is the Commander in Chief. *See* U.S. Const. art. I, § 8, cl. 1; *id.* art. II, § 2, cl. 1. Because Congress and the President agreed on the cotton fee, the *Hamilton* Court found no need to determine "the precise boundary between the legislative and executive powers in reference to the question under consideration." *Hamilton*, 88 U.S. at 88.

C. The Spanish-American War

The third historical episode discussed in the Bamzai brief—the tariffs imposed by President McKinley during the Spanish-American War—illustrates the limits of presidential tariff authority before 1917. While the brief correctly notes that McKinley imposed duties on the Philippine Islands as a wartime measure, it fails to acknowledge that this Court in *Lincoln v. United States* rejected the extension of that authority beyond its narrow wartime context and emphasized the necessity of congressional authorization for peacetime tariffs. Moreover, the Philippine duties, like those from the Mexican-American War addressed in

Fleming and *Cross*, were imposed in the unique context of military occupation.

McKinley's 1898 order directed that duties be collected "upon the occupation of any forts and places in the Philippine Islands by the forces of the United States[]" as a "military contribution." *Lincoln,* 197 U.S. at 428 (quoting the order). The plaintiffs in *Lincoln* sued to recover duties on imports paid after the ratification of the peace treaty with Spain in 1899. *Id.* at 427. This Court interpreted McKinley's order narrowly as "a measure taken with reference to that war alone, and not with reference to the insurrection of the native inhabitants of the Philippines," which persisted after the war with Spain had concluded. *Id.* The Court emphasized that the order "was not a power in blank for any military occasion which might turn up in the future," but was rather "a regulation for and during an existing war." *Id.* at 428.

Lincoln accordingly rejected the attempt to extend McKinley's tariff authority beyond the Spanish-American War and into the subsequent period of Philippine insurrection. In so doing, the Court invalidated over two years of duty collections. *Id.* at 427.

This Court also turned aside the argument that Congress retroactively approved the peacetime tariffs through a 1902 statute that ratified the President's actions "heretofore taken by virtue of the authority vested in him as Commander-in-Chief of the Army and Navy, as set forth in his order of July 12, 1898." *Id.* at 429 (quoting Organic Act of the Philippine Islands, Pub. L. No. 57-235, 32 Stat. 691, 692 (1902)). The Court held that "the approval of the action of the authorities is confined to those which were in accordance with the provision of the order, which, as we already have intimated, the collection of these duties was not." *Id.* at 429. The Court thus required specific

congressional authorization for the peacetime tariffs. On rehearing, this Court again rejected the government's ratification argument on the same grounds, holding that "the ambiguous language of the act should not be stretched beyond the exact and literal meaning of the words," which covered only wartime tariffs. *Lincoln v. United States*, 202 U.S. 484, 499 (1906).

The Spanish-American War episode, properly understood, demonstrates the limits of presidential tariff authority in the pre-1917 period. Without addressing whether presidents have unilateral power to impose tariffs—even when there was an ongoing insurrection in occupied territory—the *Lincoln* decisions constricted the scope of the tariffs in question, limiting them to periods of actual declared war and refusing to extend them to subsequent conflicts. This Court demanded express statutory language before recognizing congressional ratification of such peacetime tariffs.

In short, this Court refused to allow the executive to bootstrap a narrow wartime authority into broader peacetime powers. As the Bamzai brief acknowledges, the President's "authority to impose the duty as a wartime measure expired on the treaty of peace," Bamzai Br. 15, notwithstanding continuing military operations against armed insurgents, *see Lincoln*, 197 U.S. at 427. Even during active hostilities, this Court insisted on searching judicial review and strict limits on the exercise of executive power with respect to tariffs.

* * *

These three historical episodes reveal contested assertions of executive authority rather than a consensus on established principles. Moreover, they all involved circumstances that are not present in every declared war, including military occupation of enemy territory, collection of duties for the support of the

occupying armies, and congressional ratification of such duties. This Court took cognizance of those special circumstances in each case addressing presidential tariffs. Far from settling the separation-of-powers questions they raised, these precedents left unresolved whether the President could impose wartime tariffs absent congressional authorization.

II. Regardless of the Original TWEA's Meaning, Congress Later Severed the Act from Its War Powers Foundation, and IEEPA Does Not Incorporate Implicit Tariff Authority.

Even assuming that law-of-war principles recognized a wartime tariff authority in 1917, and that those principles were codified in the original TWEA, that does not necessarily mean that the TWEA continued to confer this authority even after it was subsequently amended, much less that IEEPA's later use of the same language implicitly granted this authority too. On the contrary, amendments to the TWEA fundamentally transformed the statute and dissolved any link with wartime powers and implied tariff authority.

The original TWEA drew its legitimacy from the war powers enumerated in the Constitution and from centuries-old principles of international law. But when Congress extended the TWEA to peacetime emergencies in 1933, it severed the statute from these moorings. And by 1977, Congress recognized that the accumulated amendments to the Act had created an incoherent and dangerously broad grant of authority, leading Congress to bifurcate war powers and peacetime emergency powers in separate statutes. The Bamzai brief ignores this transformation, attempting to transplant wartime authorities rooted in constitutional and international law into a peacetime statute deliberately designed to constrain executive power.

When Congress passed the TWEA in 1917, it created what this Court recognized as "strictly a war measure" that found "its sanction" in Congress's war powers, *Stoehr*, 255 U.S. at 242, including Congress's Article I power "to declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water," *id.* (quoting U.S. Const. art. I, § 8, cl. 11). As this Court explained, it is "not debatable" that "Congress in time of war may authorize and provide for the seizure and sequestration through executive channels of property believed to be enemy-owned." *Id.* at 245.

Based on that foundation, the original TWEA codified what its drafters understood to be the principle of international law that a state of war fundamentally alters legal relationships between nations and their citizens. *See* Aditya Bamzai, *Sanctions and the Emergency Constitution*, 172 U. Pa. L. Rev. 1917, 1919-20, 1922-23, 1944-46 (2024). Under the law of nations, as interpreted by early American courts, a declaration of war suspended commercial intercourse between citizens of belligerent states and subjected enemy property to seizure as an incident to armed conflict. *See id.* at 1926-32; Bamzai Br. 5-7. While the scope of the authority that a congressional declaration of war intrinsically delegated to the President was fiercely contested, this Court understood that under the law of nations, "war gives to the sovereign full right to take the persons and confiscate the property of the enemy wherever found." *Brown v. United States*, 12 U.S. 110, 122 (1814). The exceptional powers over commercial transactions that the TWEA delegated to the President derived from this law-of-war context.

As originally enacted, the TWEA expressly authorized presidents to impose conditions on imports. Section 11 empowered the President, by proclamation,

to make it "unlawful to import into the United States from any country . . . any article . . . except at such time or times, and under such regulations or orders, and subject to such limitations and exceptions as the President shall prescribe." Trading with the Enemy Act of 1917, ch. 106, § 11, 40 Stat. 411, 422-23. But this authority over the regulation of imports expired with the end of World War I. By limiting this authority to "the present war," *id.* at 422, Congress left no doubt that the delegation of its authority to regulate imports was an extraordinary measure that would not extend into peacetime.

The Bamzai brief attempts to construct a historical narrative in which two subsequent statutory developments—the 1933 amendment to the TWEA expanding its scope to national emergencies, combined with the 1941 wartime measure delegating authority over regulating imports—created a general peacetime authority over tariffs that should be read into IEEPA. *See* Bamzai Br. 27-28. This narrative breaks down when examined against the statutory and legislative histories of the 1933 and 1941 amendments, as well as the present-day statutory structure of the TWEA and IEEPA.

In 1933, Congress extended the reach of Section 5(b) of the TWEA beyond declared wars to "any other period of national emergency declared by the President." Emergency Banking Relief Act, Pub. L. No. 73-1, 48 Stat. 1, 1 (1933). The 1933 amendment did not merely expand the statute's scope. It detached the statute from its twin foundations in constitutional war powers and international law. As Professor Bamzai has observed in his scholarship, the 1933 amendment "severed the link between a formal declaration of war and the confiscation authorities that the TWEA delegated" and thereby "unmoored the law's constitutional

underpinnings from its theoretical bases." Bamzai, *Sanctions and the Emergency Constitution*, *supra*, at 1922, 1948.

Under international law, "a declaration of war in itself creates a state of war" that legitimates, among other things, "the seizure of enemy property." Jennifer K. Elsea & Matthew C. Weed, Cong. Rsch. Serv., No. RL31133, *Declarations of War and Authorizations for the Use of Military Force*, at summary (2014). Unlike a declaration of war, which triggers specific constitutional authorities and alters international legal relationships, a presidential declaration of a "national emergency" is purely a creature of domestic statute. *See* L. Elaine Halchin, Cong. Rsch. Serv., No. 98-505, *National Emergency Powers* 8-11 (2021). It does not trigger any alteration of international legal status, authorize the seizure of foreign property, or suspend normal commercial relationships under international law.

The peacetime domestic focus of the 1933 amendment confirms this fundamental break with the TWEA's origins in constitutional war powers and law-of-war principles. During the Great Depression, President Franklin D. Roosevelt proclaimed a "bank holiday" and expressly invoked Section 5(b) of the TWEA, rather than any inherent executive powers, as his sole authority. *See* Proclamation No. 2038, 48 Stat. 1689 (Mar. 6, 1933); *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 647 n.16 (1952) (Jackson, J., concurring). The President's power to close the nation's banks during peacetime under the authority of the TWEA was a dubious proposition, and President Hoover had declined to take similar action on the advice of his Attorney General. *See* Raymond Moley, *The First New Deal* 150 (1966).

Congress resolved this problem by adopting the Emergency Banking Relief Act in 1933. As this Court

has observed, Congress delegated to the President wide authorities to regulate the nation's banks by "graft[ing]" the 1933 Act onto the TWEA. *Propper v. Clark*, 337 U.S. 472, 481 (1949). Section 1 of the Act expressly ratified the Roosevelt bank holiday under the authority of Section 5(b) of the TWEA. 48 Stat. at 1. Section 2, meanwhile, amended the TWEA to expand the scope of Section 5(b) to periods of declared "national emergency," so as to leave no doubt about the President's authority to take similar regulatory actions to combat the Great Depression going forward. *See id.* The history of the 1933 amendment makes clear that Congress amended the TWEA to address a domestic financial crisis that had nothing to do with foreign enemies or military conflict.

Further, when Congress subsequently amended the TWEA in 1941 to give the President the authority to "regulate . . . importation," First War Powers Act of 1941, Pub. L. No. 77-354, § 301, 55 Stat. 838, 839, it did so as a temporary wartime expedient, not a permanent expansion of peacetime presidential power. Passed less than two weeks after the attack on Pearl Harbor, the Act was intended "to expedite the prosecution of the war effort" and "confer[] upon the President authority which is urgently needed in order to put the Government of the United States on an immediate war footing." H.R. Rep. No. 77-1507, at 1 (1941). The measure was "based on the experience of World War I and . . . intended to give the President of the United States and the Commander in Chief of the Army and Navy certain powers similar to those which President Wilson had during that war." *Id.* These powers, which included authorities under the original TWEA that had lapsed at the end of World War I, *see id.* at 2-3, were not peacetime regulatory authorities, but war powers for prosecuting World War II.

To be sure, Congress retained the "national emergency" language in its wartime amendment of Section 5(b) of the TWEA, but history makes clear why it did so. Testifying before the Senate Judiciary Committee, Attorney General Francis Biddle explained that the phrase "during any other period of national emergency" was necessary because "you will have a continuous period of the Government having taken over alien property" even after the end of the war. *Informal Hearings Before the S. Judiciary Comm. in Exec. Sess. RE: S. 2129*, at 1 (1941). Biddle explained that the federal government's "Alien Property Custodian still handles property . . . twenty-five years" after the end of World War I and that "the duties of the Alien Custodian should not be terminated with the termination of the war." *Id.* Retention of the "national emergency" language thus addressed the practical problem of continuing to administer property seized during a war after formal hostilities concluded—and was not intended to create new peacetime tariff authorities.

To the extent that the 1941 amendment conferred broader powers than those granted to President Wilson, Congress understood those expansions to concern the federal government's authority to take title to and liquidate alien property—not to create general tariff authority. In a colloquy on the Senate floor, Senator Arthur Vandenberg specifically inquired about which powers in the legislation exceeded those granted to President Wilson under the original TWEA. Senator Frederick Van Nuys, chairman of the Judiciary Committee, responded that the expansion of power was limited to the new authority "not only to freeze [alien] assets, but to seize them and dispose of them and liquidate them—something that has been contested in the powers of the Alien Property Custodian heretofore." 87 Cong. Rec. 9845 (1941). No member of

Congress even remotely suggested that the addition of "importation" to Section 5(b) would authorize the President to impose peacetime tariffs.

By 1977, Congress was concerned that through its various expansions, the TWEA had "become essentially an unlimited grant of authority for the President to exercise, at his discretion, broad powers in both the domestic and international arena, without congressional review." H.R. Rep. No. 95-459, at 7 (1977). As the Bamzai brief notes, Congress "sought to narrow the authority that the executive branch had exercised under the TWEA in some ways." Bamzai Br. 23. In particular, "Congress's intent was to curtail the expansive emergency economic powers that the TWEA had delegated to the President." Bamzai, *Sanctions and the Emergency Constitution*, *supra*, at 1921.

Congress's solution was surgical: bifurcation of Congress's war powers and its peacetime emergency powers. Congress first amended the TWEA so it no longer applied outside of declared wars, restoring the statute's original foundation in constitutional war powers and international law principles. *See* Amendments to the Trading with the Enemy Act, Pub. L. No. 95-223, § 101, 91 Stat. 1625, 1625 (1977). Congress then passed IEEPA, which applied to national emergencies outside of wartime. International Emergency Economic Powers Act, Pub. L. No. 95-223, § 202, 91 Stat. 1626, 1626 (1977). Crucially, IEEPA's grant of authorities was more constrained than it had been under the TWEA and was tied to a narrower definition of a national emergency. *See id.* (limiting IEEPA authority to declared national emergencies that have their "source in whole or substantial part outside the United States"). This bifurcated statutory structure segregated war powers from other regulatory authorities and reflected Congress's recognition that the

authorities cobbled together in the 1933, 1941, and other amendments to the TWEA had created an untenable conflation of different categories of powers.

Significantly, too, Congress did not include in IEEPA the authority to vest title to foreign assets, a power the TWEA had conferred in the 1941 wartime amendment. *See Regan v. Wald*, 468 U.S. 222, 228 n.8 (1984). Congress's subsequent grants of limited vesting authority in narrowly defined circumstances—the USA Patriot Act of 2001's amendment of IEEPA to add vesting powers in times of armed hostilities or foreign attack, Pub. L. No. 107-56, § 106, 115 Stat. 272, 277-78, and the REPO Act of 2024's authorization of the liquidation of Russian assets for Ukraine, Pub. L. No. 118-50, Div. F, 138 Stat. 895, 947-51—confirm that IEEPA's general regulatory powers do not include the authority to permanently deprive owners of property, whether through confiscation or taxation. *See* Paul Stephan, *IEEPA Authorizes Asset Freezing, Not Seizing*, Lawfare (Sept. 30, 2025), https://www.lawfaremedia.org/article/ieepa-authorizes-asset-freezing--not-seizing.

In short, "Congress in 1977 meant to draw a line between war powers and other means for the executive to shape international relations. Giving a war powers gloss to IEEPA's use of 'regulate' would defeat that intention." *Id.* The phrase "regulate . . . importation" takes its meaning from IEEPA's peacetime emergency context, not from any war powers foundation from which the TWEA became unmoored in 1933.

CONCLUSION

For the foregoing reasons, the decisions of the courts below should be affirmed.

Respectfully submitted,

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