

In the Supreme Court of the United States

LEARNING RESOURCES, INC., *et al.*,
Petitioners,

v.

DONALD J. TRUMP, *et al.*,
Respondents.

(For Continuation of Caption, See Inside Cover)

ON WRIT OF CERTIORARI BEFORE JUDGMENT TO THE
UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF
COLUMBIA CIRCUIT

**BRIEF FOR THE STATE OF CALIFORNIA AND
GOVERNOR GAVIN NEWSOM AS AMICI CURIAE
IN SUPPORT OF PETITIONERS IN NO. 24-1287 AND
RESPONDENTS IN NO. 25-250**

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v.

V.O.S. SELECTIONS, INC., *et al.*,

Respondents.

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

TABLE OF CONTENTS

	Page
Interests of amici	1
Summary of argument	1
Argument	4
I. By its plain text, IEEPA does not authorize the President to impose tariffs	4
ii. Statutory context confirms that IEEPA does not authorize the President to impose tariffs	9
iii. Statutory history and historical practice confirm that IEEPA does not authorize the President to impose tariffs.....	13
iv. Congress did not ratify <i>Yoshida</i> , and in any event, <i>Yoshida</i> does not resolve IEEPA's meaning	17
v. The major questions doctrine confirms that IEEPA does not authorize the President to impose tariffs.....	20
Conclusion.....	24

TABLE OF AUTHORITIES

	Page
CASES	
<i>Ala. Ass’n of Realtors v. Dep’t of Health & Hum. Servs.</i> 594 U.S. 758 (2021)	22
<i>Biden v. Nebraska</i> 600 U.S. 477 (2023)	10, 23
<i>BP v. Mayor & City Council of Balt.</i> 593 U.S. 230 (2021)	20
<i>Brown v. Gardner</i> 513 U.S. 115 (1994)	10, 12
<i>Clark v. Martinez</i> 543 U.S. 371 (2005)	11
<i>Commodity Futures Trading Comm’n v. Nahas</i> 738 F.2d 487 (D.C. Cir. 1984)	18
<i>Conchise Consultancy, Inc. v. United States ex rel. Hunt</i> 587 U.S. 262 (2019)	10
<i>Davis v. United States</i> 512 U.S. 452 (1994)	7
<i>Diginet, Inc. v. Western Union ATS, Inc.</i> 958 F.2d 1388 (7th Cir. 1992)	5

TABLE OF AUTHORITIES
(continued)

	Page
<i>Encino Motorcars, LLC v. Navarro</i> 584 U.S. 79 (2018)	18
<i>Fed. Commc'ns Comm'n v. Consumers'</i> <i>Rsch.</i> 145 S. Ct. 2482 (2025)	22
<i>Fed. Energy Admin. v. Algonquin SNG</i> 426 U.S. 548 (1976)	7, 8
<i>Guerrero-Lasprilla v. Barr</i> 589 U.S. 221 (2020)	14
<i>Gundy v. United States</i> 588 U.S. 128 (2019)	13
<i>Gustafson v. Alloyd Co., Inc.</i> 513 U.S. 561 (1995)	10
<i>Jama v. Immigr. & Customs Enf't</i> 543 U.S. 335 (2005)	19
<i>Jennings v. Rodriguez</i> 583 U.S. 281 (2018)	11
<i>Jimenez v. Quarterman</i> 555 U.S. 113 (2009)	18
<i>Loper Bright Enters. v. Raimondo</i> 603 U.S. 369 (2024)	16
<i>Louisiana v. Biden</i> 55 F.4th 1017 (5th Cir. 2022)	22

TABLE OF AUTHORITIES
(continued)

	Page
<i>Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. Ruckelshaus</i>	
719 F.2d 1159 (D.C. Cir. 1983)	16
<i>Nat’l Fed’n of Indep. Bus. v. Dep’t of Lab.</i>	
595 U.S. 109 (2022)	16
<i>Nat’l Fed’n of Indep. Bus. v. Sebelius</i>	
567 U.S. 519 (2012)	7
<i>Nebraska v. Su</i>	
121 F.4th 1 (9th Cir. 2024)	21, 22, 23
<i>Oklahoma v. Castro-Huerta</i>	
597 U.S. 629 (2022)	19
<i>Regan v. Wald</i>	
468 U.S. 222 (1984)	16
<i>TikTok v. Trump</i>	
507 F. Supp. 3d 92 (D.D.C. 2020)	10
<i>United States v. U.S. Shoe Corp</i>	
523 U.S. 360 (1998)	11
<i>United States v. Williams</i>	
553 U.S. 285 (2008)	9
<i>United States v. Yoshida Int’l, Inc.</i> 526 F.2d 560 (C.C.P.A. 1975)	
.....	15, 17, 18, 19, 20

TABLE OF AUTHORITIES
(continued)

	Page
<i>Verlinden B.V. v. Cent. Bank of Nigeria</i> 461 U.S. 480 (1983)	7
<i>West Virginia v. Env't Prot. Agency</i> 597 U.S. 697 (2022)	2, 9, 21, 22
<i>Whitman v. Am. Trucking Assns., Inc.</i> 531 U.S. 457 (2001)	10, 22
<i>Yoshida Int'l, Inc. v. United States</i> 378 F. Supp. 1155 (Cust. Ct. 1974)....	15, 17, 18, 21
<i>Youngstown Sheet & Tube Co. v. Sawyer</i> 343 U.S. 579 (1952)	2
<i>Ysleta del Sur Pueblo v. Texas</i> 596 U.S. 685 (2022)	6
STATUTES	
2 U.S.C. § 622(8)(B)(i).....	5
12 U.S.C. § 5491(a)	6
15 U.S.C. § 78k(a)(2).....	6
16 U.S.C. § 460bbb-9(a).....	5

TABLE OF AUTHORITIES
(continued)

	Page
19 U.S.C.	
§ 1338.....	4
§ 1862.....	4, 8
§ 2132(a)	4, 19
§ 2253.....	4
§ 2411-2419.....	4
§ 2411(c)(1)(B)	19
49 U.S.C. § 40117(j)	5
50 U.S.C.	
§ 1631.....	17
§ 1702(a)(1)(B)	4, 5, 7, 9, 11, 14, 15
§ 1702(a)(2)	11
Emergency Banking Relief Act, Pub. L.	
No. 73-1, 48 Stat. 1 (1933)	14
First War Powers Act, Pub. L. No. 77-	
354, 55 Stat. 838 (1941)	14
Trade Act of 1974, Pub. L. No. 93-618,	
88 Stat. 1978 (1975)	19, 20
Trade Expansion Act of 1962, Pub. L.	
No. 87-794, 76 Stat. 872 (1962)	8
Trading With the Enemy Act,	
Pub. L. No. 65-91, 40 Stat. 411	
(1917)	13, 14, 15, 17, 18, 19, 21

TABLE OF AUTHORITIES
(continued)

	Page
CONSTITUTIONAL PROVISIONS	
U.S. Const. art. I	
§ 8, cl. 1	1
§ 9, cl. 5	11
OTHER AUTHORITIES	
Anna Swanson, <i>In Retaliatory Move,</i> <i>Trump Threatens 100% Tariffs on</i> <i>Chinese Goods</i> , N.Y. Times (Oct. 10, 2025)	3
Christopher A. Casey & Jennifer K. Elsea, Cong. Rsch. Serv., R45618, <i>The International Emergency</i> <i>Economic Powers Act: Origins,</i> <i>Evolution, and Use</i> (Jan. 30, 2024).....	15
Christopher A. Casey, Cong. Rsch. Serv., IF 11030, <i>U.S. Tariff Policy:</i> <i>Overview</i> (Jan. 31, 2025).....	6
Exec. Order No. 14,323, <i>Addressing</i> <i>Threats to the United States by the</i> <i>Government of Brazil</i> , 90 Fed. Reg. 37,739 (July 30, 2025)	3
H.R. Rep. No. 65-85 (1917).....	13
H.R. Rep. No. 65-155 (1917).....	13

TABLE OF AUTHORITIES
(continued)

	Page
H.R. Rep. No. 77-1507 (1941).....	14
H.R. Rep. No. 94-238 (1976).....	16
H.R. Rep. No. 95-459 (1977).....	15, 16
Proclamation No. 4074, 36 Fed. Reg. 15,724 (Aug. 17, 1971).....	15, 17
Proclamation No. 4098, 36 Fed. Reg. 24,201 (Dec. 22, 1971)	15, 17
Rebecca Robbins & Margot Sanger-Katz, <i>Trump Announces a Deal on Drug</i> <i>Prices with AstraZeneca</i> , N.Y. Times (Oct. 10, 2025)	3
<i>Regulate</i> , WEBSTER’S THIRD INTERNATIONAL DICTIONARY (1986)	6
S. Rep. No. 94-922 (1976)	16
S. Rep. No. 95-466 (1977)	15
<i>Tariff</i> , THE CONCISE OXFORD DICTIONARY OF CURRENT ENGLISH (6th ed. 1976).....	6
<i>Tax</i> , THE CONCISE OXFORD DICTIONARY OF CURRENT ENGLISH (6th ed. 1976).....	7

TABLE OF AUTHORITIES
(continued)

	Page
U.S. Customs & Border Protection, <i>Entry Summary and Post Release</i> <i>Processes</i> (last modified Apr. 10, 2025)	11

INTERESTS OF AMICI

California is the fourth-largest economy in the world and the largest importer of goods among the fifty States. The unprecedented tariffs imposed by the executive orders at issue in these cases threaten to devastate California's economy, depriving it of \$25 billion and more than 64,000 jobs. The State of California and Governor Gavin Newsom (collectively, California) filed an action in district court challenging those executive orders as ultra vires and arguing that the statute the President invoked to impose the tariffs, the International Emergency Economic Powers Act (IEEPA), does not delegate any tariff power to the President. *See California v. Trump*, No. 3:25-cv-03372 (N.D. Cal.). That action has been held in abeyance by the Ninth Circuit pending this Court's resolution of these cases. *See California v. Trump*, No. 25-3493, Dkt. 67 (9th Cir.).

California agrees with the *Learning Resources* petitioners that subject-matter jurisdiction over actions challenging the President's IEEPA tariff orders as ultra vires lies in the district court, not the Court of International Trade. And California agrees with all the plaintiffs before this Court that the tariff orders are unlawful. California submits this amicus brief to explain why IEEPA does not delegate any authority to the President to impose tariffs.

SUMMARY OF ARGUMENT

Under the Constitution, it is Congress that "shall have Power To lay and collect Taxes, Duties, Imposts and Excises." U.S. Const. art. I, § 8, cl. 1. The power to impose tariffs is so core to legislative authority that the Framers listed it first among Congress's powers. *See id.* The President has no independent authority to

impose or alter tariffs; any such authority must be delegated by Congress. See *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952). Consistent with those principles, Congress has expressly granted the President carefully circumscribed authority to impose tariffs through a series of Tariff and Trade Acts. Until recently, Presidents seeking to impose tariffs have done so only pursuant to those clear delegations of authority.

But since February 2025, the President has issued an unprecedented and chaotic series of executive orders imposing tariffs ranging from 10% to 145% on nearly every trading partner of the United States. He did not invoke any of the Tariff or Trade Acts as authority for his unilateral overhaul of our nation's tariff system. Instead, the President invoked IEEPA, a statute enacted in 1977 that allows the President to take certain specified actions in response to a declared national emergency resulting from an unusual and extraordinary foreign threat. In the nearly fifty years since its enactment, no President has ever before invoked IEEPA to impose tariffs. And rightly so.

The text and every other tool of statutory construction confirms that imposing tariffs is not one of the powers that Congress granted the President in IEEPA. The text of IEEPA does not reference the power to tax or tariff at all. Its statutory structure and historical practice are inconsistent with tariff authority. And other interpretative principles weigh heavily against the President's unbounded reading of IEEPA. Tariffs are a potent economic weapon. They can have as much "economic and political significance" as weapons of war when deployed against foreign nations. *West Virginia v. Env't Prot. Agency*, 597 U.S. 697, 721 (2022). In just the last few months, the President has

upended the international economic order by using tariffs to target another country for its treatment of the President's political ally; roiled the financial markets by announcing on social media his intent to impose devastating tariffs on another economic superpower; and threatened foreign companies with extortionate tariffs to extract pricing concessions.¹ Whether these actions ultimately help or harm Americans, they are of such vast significance that the President cannot undertake them without clear authorization from Congress.

IEEPA does not supply that authorization. The President cannot tariff by fiat. To safeguard the separation of powers, the Court should confirm that this President, the next President, and all future Presidents must respect the bounds of the tariffing power delegated to them by Congress, and hold that the President's actions challenged here are ultra vires. The President has arrogated to himself extraordinary powers of global consequence, for too long. This Court should swiftly put an end to that conduct and maintain the constitutional allocation of power—and constraints on the Executive—enshrined by the Framers.

¹ See Exec. Order No. 14,323, *Addressing Threats to the United States by the Government of Brazil*, 90 Fed. Reg. 37,739 (July 30, 2025); Anna Swanson, *In Retaliatory Move, Trump Threatens 100% Tariffs on Chinese Goods*, N.Y. Times (Oct. 10, 2025), <https://www.nytimes.com/2025/10/10/us/politics/trump-xi-china-tariffs-rare-earth.html>; Rebecca Robbins & Margot Sanger-Katz, *Trump Announces a Deal on Drug Prices with AstraZeneca*, N.Y. Times (Oct. 10, 2025), <https://www.nytimes.com/2025/10/10/health/trump-drug-prices-astrazeneca.html>.

ARGUMENT

I. BY ITS PLAIN TEXT, IEEPA DOES NOT AUTHORIZE THE PRESIDENT TO IMPOSE TARIFFS

1. Every time that Congress has delegated its tariff authority to the President, it has referred explicitly to that power, using terms like “duties” or “tariffs”; it has set forth procedural and substantive constraints on the President’s authority; and it has codified the statute under Title 19, denominated “Customs Duties.” *See* 19 U.S.C. §§ 1338, 1862, 2132(a), 2253, 2411-2419. For example, Section 338 of the Tariff Act of 1930 grants the President the authority to “declare new or additional duties” on imports from countries that have discriminated against U.S. products or commerce, but only after a 30-day waiting period and only up to 50 percent ad valorem. *Id.* § 1338(a), (d), (e). Similarly, Section 122 of the Trade Act of 1974 explicitly authorizes the President to impose “duties” on imports in order “to deal with large and serious United States balance-of-payments deficits,” but only for “a period not exceeding 150 days” and only up to “15 percent ad valorem.” *Id.* § 2132(a).

Unlike those statutes, IEEPA—codified under Title 50, denominated “War and Defense”—makes no mention of “tariffs,” “duties,” or any similar term, such as “customs,” “taxes,” or “imposts.” And it imposes no comparable procedural or substantive constraints. Instead, Section 1702(a)(1)(B) of IEEPA grants the President a set of enumerated powers to “deal with” certain national emergencies. Specifically, the President may:

investigate, block during the pendency of an investigation, regulate, direct and compel, nullify, void, prevent or prohibit,

any acquisition, holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving,

any property in which any foreign country or a national thereof has any interest

by any person, or with respect to any property, subject to the jurisdiction of the United States[.]

50 U.S.C. § 1702(a)(1)(B) (line breaks added for readability).

The federal government contends that the President’s power to “regulate . . . importation” under IEEPA implies a power to impose tariffs. U.S. Br. 23-32. But absent express authorization, Congress’s delegation of the power to regulate does not encompass its distinct power to tax. *See, e.g., Diginet, Inc. v. Western Union ATS, Inc.*, 958 F.2d 1388, 1399 (7th Cir. 1992) (noting that “[t]he legal power to regulate is not necessarily the legal power to tax” and holding that a municipality’s “power to regulate” did not include the power to “generate revenues” through taxation “without explicit authority from the state”). That is why Congress uses the terms “tax” and “regulate” disjunctively to delegate both powers in a single statute (but not this one). *See, e.g.*, 49 U.S.C. § 40117(j) (“tax, regulate, or prohibit”); 16 U.S.C. § 460bbb-9(a) (power “to tax . . . or to regulate”); 2 U.S.C. § 622(8)(B)(i) (“power to tax or to regulate interstate commerce”).

Congress has granted many different agencies the power to “regulate” their respective industries. *See, e.g.*, 12 U.S.C. § 5491(a) (granting Consumer Financial Protection Bureau power to “regulate the offering and provision of consumer financial products or services”); 15 U.S.C. § 78k(a)(2) (granting Securities and Exchange Commission power to “regulate” certain “transactions on a national securities exchange”). Those statutory grants of authority have never been understood to encompass the power to tax or tariff. Indeed, the federal government has not pointed to a single other statute in the entirety of the U.S. Code where “regulate” has been—or, in the federal government’s view, should be—understood to confer such power.

Congress has distinguished between “regulate and “tax” because those terms have different meanings. “[T]o *regulate* something is usually understood to mean to ‘fix the time, amount, degree, or rate’ of an activity ‘according to rule[s].” *Ysleta del Sur Pueblo v. Texas*, 596 U.S. 685, 697 (2022) (quoting *Regulate*, WEBSTER’S THIRD INTERNATIONAL DICTIONARY 1913 (1986)). Accordingly, regulating importation could include establishing rules to control the frequency, location, quantity, and quality of imports, such as rules imposing safety inspections on certain goods, requiring country-of-origin documentation, or permitting imports to enter the country only at certain times or up to certain amounts.

By contrast, “[a] tariff is a tax levied on imported goods and services.” Christopher A. Casey, Cong. Rsch. Serv., IF 11030, *U.S. Tariff Policy: Overview* 1 (Jan. 31, 2025), <https://www.congress.gov/crs-product/IF11030>; *see also Tariff*, THE CONCISE OXFORD DICTIONARY OF CURRENT ENGLISH 1183-1184 (6th ed. 1976)

(“List of duties or customs to be paid on imports or exports; such duties collectively; law imposing these; duty on particular class of goods.”). And to tax is to raise “revenue for the Government.” *Nat’l Fed’n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 564 (2012); see also, e.g., *Tax*, THE CONCISE OXFORD DICTIONARY OF CURRENT ENGLISH 1186 (6th ed. 1976) (“[c]ontribution levied on . . . persons, property, or business, for support of national or local government”).

To be clear, California is not proposing a “magic-words” requirement. *Contra* U.S. Br. 27. Rather, the relevant interpretative principle is that Congress’s consistent usage of the term “regulate” in other statutes signals what it intends the same word to mean in Section 1702(a)(1)(B) of IEEPA. And because Congress has never once used the term “regulate” to include the power to tax or tariff, it should not be understood to confer such power in IEEPA.

2. The federal government invokes cases addressing Congress’s ability to impose duties under its Commerce Clause power, as well as its Taxing Clause power. U.S. Br. 24-25, 29-30. But those cases miss the point: Congress’s use of the term “regulate” in a statute does not mean that Congress intended to delegate the full extent of its *constitutional* authority to the Executive. “The meaning of terms in statutes does not necessarily parallel their meaning in the Constitution.” *Davis v. United States*, 512 U.S. 452, 463 n.* (1994) (Scalia, J., concurring); see, e.g., *Verlinden B.V. v. Cent. Bank of Nigeria*, 461 U.S. 480, 494-495 (1983) (explaining why this Court has interpreted statutory and constitutional uses of “arising under” differently).

Nor does this Court’s decision in *Federal Energy Administration v. Algonquin SNG*, 426 U.S. 548 (1976), shed any meaning on the term “regulate” as it

appears in IEEPA. If anything, the differences between IEEPA and the statute in *Algonquin* highlight what is missing from IEEPA.

Algonquin addressed Section 232(b) of the Trade Expansion Act of 1962, a law codified in Title 19 that repeatedly uses the terms “tariffs” and “duties,” including in Section 232 itself (subsection (a)) and the sections surrounding it. *See* Pub. L. No. 87-794, 76 Stat. 872, 874-877, 879-883 (1962). Section 232(b) authorized the President to “take such action, and for such time, as he deems necessary to *adjust* the imports of (the) article” to protect national security. *Algonquin*, 426 U.S. at 550 (quoting 19 U.S.C. § 1862(b) (1970)) (emphasis added). This Court held that Section 232(b) allows the President to impose import license fees, but its holding was not based on the plain meaning of the phrase “adjust . . . imports.” *Id.* at 561-571. Rather, the Court’s holding was based on Section 232(b)’s broad prefatory language, which has no parallel in IEEPA, and the Trade Expansion Act’s legislative history, which was replete with references to duties and tariffs. *Id.* at 562-570. Members of both Houses and the Executive Branch expressly specified that Section 232(b) “[i]nclud[es] the use of[] tariffs, quotas, import taxes or other methods of import restriction.” *Id.* at 564; *see id.* at 567. In contrast, the legislative history of IEEPA is bereft of similar statements. *See infra* pp. 14-15. Applying the same interpretive tools from *Algonquin* to IEEPA thus yields the opposite conclusion—IEEPA does not provide for tariffs.

II. STATUTORY CONTEXT CONFIRMS THAT IEEPA DOES NOT AUTHORIZE THE PRESIDENT TO IMPOSE TARIFFS

“[T]he words of a statute must be read in their context and with a view to their place in the overall statutory scheme.” *West Virginia*, 597 U.S. at 721. Reading the phrase “regulate . . . importation” in the context of Section 1702(a)(1)(B) confirms that the phrase does not confer the power to impose tariffs.

The power to “regulate” is not the only emergency power listed in Section 1702(a)(1)(B). That provision grants the President seven other emergency powers in addition to “regulate”: (1) “investigate,” (2) “block during the pendency of an investigation,” (3) “direct and compel,” (4) “nullify,” (5) “void,” (6) “prevent,” and (7) “prohibit.” 50 U.S.C. § 1702(a)(1)(B). Under “the commonsense canon of *noscitur a sociis*[,] . . . a word is given more precise content by the neighboring words with which it is associated.” *United States v. Williams*, 553 U.S. 285, 294 (2008). None of the other powers enumerated in IEEPA encompasses the ability to tariff, tax, or otherwise generate revenue. Instead, they refer to cutting off or restricting transactions.

Additionally, “importation” is not the only activity to which Section 1702(a)(1)(B)’s powers can be applied. Section 1702(a)(1)(B) of IEEPA provides that each of the eight emergency powers can be applied to twelve different activities concerning “property in which any foreign country or a national thereof has any interest”: (1) “acquisition,” (2) “holding,” (3) “withholding,” (4) “use,” (5) “transfer,” (6) “withdrawal,” (7) “transportation,” (8) “importation,” (9) “exportation,” (10) “dealing,” (11) the “exercis[e] of ‘any right, power, or privilege,’” and (12) “transactions.” 50 U.S.C. § 1702(a)(1)(B). “Regulate” must have a consistent

meaning as to all twelve of the enumerated activities. *See Conchise Consultancy, Inc. v. United States ex rel. Hunt*, 587 U.S. 262, 268 (2019) (“In all but the most unusual situations, a single use of a statutory phrase must have a fixed meaning.”); *Brown v. Gardner*, 513 U.S. 115, 118-120 (1994) (observing that “a given term is used to mean the same thing throughout a statute” and rejecting interpretation of statutory term that could not be applied to all items in a list without “incongruity”); *cf. TikTok v. Trump*, 507 F. Supp. 3d 92, 103 (D.D.C. 2020) (interpreting “regulate” as used in another IEEPA provision without regard to the particular objects being regulated). There is no reasonable way to construe “regulate” to encompass the power to tariff or tax all twelve activities.

To start, such a construction would mean that Congress obliquely granted the President an immense and unheralded taxing power. The President could, for example, invoke IEEPA to tax the mere holding, transfer, or acquisition of property, such as a home jointly owned by a U.S. citizen and her non-citizen mother, or a bank account shared by a U.S. citizen and his non-citizen spouse. But Congress does not “hide elephants in mouseholes.” *Whitman v. Am. Trucking Assns., Inc.*, 531 U.S. 457, 468 (2001). If Congress had intended to grant the President such extraordinary authority, it would have said so. *See Biden v. Nebraska*, 600 U.S. 477, 506 (2023); *Gustafson v. Alloyd Co., Inc.*, 513 U.S. 561, 575 (1995) (cautioning courts “to avoid ascribing to one word a meaning so broad that it is inconsistent with its accompanying words, thus giving ‘unintended breadth to the Acts of Congress’”).

Construing “regulate” to mean tariff or tax would also render IEEPA unconstitutional in certain applications. IEEPA grants the President authority to “regulate . . . importation or exportation.” 50 U.S.C. § 1702(a)(1)(B) (emphasis added). But the Constitution expressly bars tariffs on most exports. U.S. Const. art. I, § 9, cl. 5; see *United States v. U.S. Shoe Corp.*, 523 U.S. 360, 363 (1998). The doctrine of constitutional avoidance counsels against interpreting “regulate” to encompass the power to impose tariffs or taxes, as that interpretation would “raise[] serious constitutional doubts.” *Jennings v. Rodriguez*, 583 U.S. 281, 286 (2018); see also *Clark v. Martinez*, 543 U.S. 371, 380 (2005) (“It is not at all unusual to give a statute’s ambiguous language a limiting construction called for by one of the statute’s applications, even though other of the statute’s applications, standing alone, would not support the same limitation.”).

One further tension between the federal government’s interpretation and the statutory context: Section 1702(a)(1)(B) applies only to “property in which any foreign country or a national thereof *has* any interest.” 50 U.S.C. § 1702(a)(1)(B) (emphasis added). Compare with 50 U.S.C. § 1702(a)(2) (providing that the President can require individuals to keep records of property in which a foreign country or national “*has or has had* any interest” (emphasis added)). Yet tariffs are often paid on property in which a foreign country or national no longer has any interest because the property has already entered the United States and been taken under the full control of the U.S. importer at the time the U.S. importer pays the tariff. See, e.g., U.S. Customs & Border Protection, *Entry Summary and Post Release Processes*, <https://www.cbp.gov/trade/programs-administration/entry-summary> (last modified Apr. 10, 2025). It would

be passing strange for Congress to grant the President a broad emergency power to impose tariffs and then carve out an exception for U.S.-owned imports, particularly where no other tariff statute provides for such an exception and where such exception would surely be difficult to administer.

The federal government seeks to avoid these many interpretive problems by advancing an idiosyncratic meaning of “regulate” that would govern in this case only. *See* U.S. Br. 30-31. The federal government asks this Court to construe “regulate” to encompass a congressional delegation of the power to tax or tariff when that term “is paired with ‘importation’” in IEEPA, because IEEPA involves “a foreign-affairs delegation to the President.” U.S. Br. 31. But in the federal government’s view, the term “regulate” does not include the power to tax when the term is applied to any of the other eleven activities set out in IEEPA, or when it is used in any other regulatory statute in the entirety of the U.S. Code. *See* U.S. Br. 31. The federal government unsurprisingly fails to cite any authority to support its interpretive approach, likely because that kind of exceptionalism is not how statutory construction works. *See, e.g., Brown*, 513 U.S. at 118.

In any event, that idiosyncratic interpretation is still untenable. Construing “regulate . . . importation” to delegate a virtually unlimited power to tax would render superfluous the many other statutes in which Congress expressly authorized and carefully circumscribed the President’s tariff authority. *See supra* pp. 4, 21. And as explained below, the federal government’s interpretation is at odds with the statutory history, historical practice, and constitutional principles. *See supra* pp. 13-16, 20-24.

III. STATUTORY HISTORY AND HISTORICAL PRACTICE CONFIRM THAT IEEPA DOES NOT AUTHORIZE THE PRESIDENT TO IMPOSE TARIFFS

“[B]eyond context and structure, the Court often looks to ‘history [and] purpose’ to divine the meaning of language.” *Gundy v. United States*, 588 U.S. 128, 141 (2019). The statutory history of IEEPA and its predecessor statute, as well as historical practice associated with both statutes, further confirm that IEEPA does not delegate the authority to impose tariffs.

Section 1702(a)(1) of IEEPA evolved from Section 5(b) of the Trading With the Enemy Act (TWEA), which was first enacted in 1917, shortly after the United States entered World War I. *See* Pub. L. No. 65-91, 40 Stat. 411 (1917). TWEA’s purpose was to prohibit trade with “enemy” nations and their allies and to permit the seizure of “enemy property” within the United States. H.R. Rep. No. 65-85, at 1-2 (1917); *see* Pub. L. No. 65-91, § 3(a) (prohibiting trade with the enemy nations and their allies); *id.* § 6 (providing for appointment of official to hold enemy property during the war); *id.* § 11 (allowing the President to bar importation from enemy nations upon finding that public safety so required).

Section 5(b) of TWEA addressed a “new subject matter” apart from the rest of the statute. H.R. Rep. No. 65-155, at 10 (1917) (Conf. Rep.). That provision granted the President authority to restrict foreign financial transactions during times of war—specifically, to “investigate,” “regulate,” and “prohibit” transactions in foreign exchange, gold, and silver, and transfers of credit, evidence of indebtedness (e.g., bonds), and evidence of ownership (e.g., stocks) between the

United States and foreign countries. Pub. L. No. 65-91, § 5(b).

Congress first amended Section 5(b) during the Great Depression. *See* Emergency Banking Relief Act, Pub. L. No. 73-1, § 2, 48 Stat. 1 (1933). That amendment authorized the President to exercise his powers during national emergencies, not just wartime, and to do so with respect to purely domestic financial transactions. *Id.*

Congress again amended Section 5(b) in 1941, days after the attack on Pearl Harbor and the United States' entry into World War II. That amendment added the phrase "regulate . . . importation" to Section 5(b), as well as much of the other language that now appears in Section 1702(a)(1)(B) of IEEPA. *See* First War Powers Act, Pub. L. No. 77-354, § 301, 55 Stat. 838 (1941). Specifically, Congress added four new powers ("direct," "compel," "nullify," "void," and "prevent") to the three powers that had appeared in the original version of Section 5(b) ("investigate," "regulate," and "prohibit"), and set out the twelve activities as to which those powers could be exercised, including "importation." *Id.* Congress's aim was to give the President the power to seize foreign property, in addition to the pre-existing power to freeze it. *See* H.R. Rep. No. 77-1507, at 3 (1941).

At no point did any version of Section 5(b) of TWEA ever mention tariffs, duties, taxes, or revenue. Nor did any of the congressional reports accompanying the original TWEA enactment in 1917 or its amendments in 1933 and 1941 contain any such reference. *See, e.g., Guerrero-Lasprilla v. Barr*, 589 U.S. 221, 231-233 (2020) (looking to statutory history to interpret statutory provision).

IEEPA’s legislative history likewise contains no indication that Congress intended to grant the President authority to impose tariffs. The relevant Senate and House Reports described these powers set forth in Section 1702(a)(1)(B) as the ability to regulate foreign exchange and banking transactions, “to control or freeze property transactions where a foreign interest is involved,” and to require recordkeeping. S. Rep. No. 95-466, at 5 (1977); *see also* H.R. Rep. No. 95-459, at 14-15 (1977) (similar). Legislators never expressed their view that IEEPA would authorize the President to impose taxes, tariffs, or otherwise generate revenue.

Against this backdrop, it is hardly surprising that in the more than 100 years since TWEA’s enactment and the nearly fifty years since IEEPA’s enactment, no President ever before invoked TWEA or IEEPA to impose tariffs.² Instead, Presidents invoked Section 5(b) of TWEA to impose economic sanctions on foreign countries; regulate foreign exchange, credit transfers, and coin and currency exports; control gold hoarding; and limit direct foreign investment by U.S. companies. *See* Christopher A. Casey & Jennifer K. Elsea, Cong. Rsch. Serv., R45618, *The International Emergency Economic Powers Act: Origins, Evolution, and Use* 6 (Jan. 30, 2024), <https://www.congress.gov/crs-product/>

² The U.S. Department of Justice once argued in response to litigation that Section 5(b) of TWEA authorized President Nixon’s 1971 import surcharges. *See Yoshida Int’l, Inc. v. United States*, 378 F. Supp. 1155, 1157 (Cust. Ct. 1974) (*Yoshida I*), *rev’d*, 526 F.2d 560 (C.C.P.A. 1975) (*Yoshida II*); *infra* p. 17. But that was an after-the-fact justification. President Nixon did not invoke or even mention Section 5(b) in the Proclamation imposing or rescinding the tariffs; he relied solely on the Trade Expansion Act of 1962 and the Tariff Act of 1930. *See* Proclamation No. 4074, 36 Fed. Reg. 15,724 (Aug. 17, 1971); Proclamation No. 4098, 36 Fed. Reg. 24,201 (Dec. 22, 1971).

R45618. And they relied on IEEPA to impose targeted sanctions on a range of persons and countries, including prohibitions on economic relations, freezes on assets, and barriers to accessing U.S. financial markets. *See id.* at 15.

The “longstanding practice of the government . . . can inform [the] [C]ourt’s determination of what” a statute provides. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 386 (2024) (internal quotation marks omitted). And the “lack of historical precedent,’ coupled with the breadth of authority that the [President] now claims, is a ‘telling indication’ that” imposing tariffs under IEEPA “extends beyond the [President’s] legitimate reach.” *Nat’l Fed’n of Indep. Bus. v. Dep’t of Lab.*, 595 U.S. 109, 119 (2022) (per curiam).

That IEEPA is an emergency statute does not justify ascribing an unprecedented meaning to the word “regulate.” *Contra* U.S. Br. 35. Just the opposite. Congress enacted IEEPA and the National Emergencies Act in response to presidential abuses of emergency authority. S. Rep. No. 94-922, at 1 (1976); *Regan v. Wald*, 468 U.S. 222, 244-249 (1984) (Blackmun, J., dissenting) (discussing history). Construing the term “regulate” to grant the President a broad tariff authority that could be used to wholly circumvent the carefully reticulated tariff scheme that Congress has elsewhere set forth threatens the very abuse of emergency executive authority for non-emergency purposes that Congress sought to mitigate. *See* H.R. Rep. No. 94-238, at 2 (1976); H.R. Rep. No. 95-459, at 11; *see generally Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. Ruckelshaus*, 719 F.2d 1159, 1165 (D.C. Cir. 1983) (“A statute should ordinarily be read to effectuate its purposes rather than to frustrate them.”).

IV. CONGRESS DID NOT RATIFY *YOSHIDA*, AND IN ANY EVENT, *YOSHIDA* DOES NOT RESOLVE IEEPA'S MEANING

The federal government maintains that the phrase “regulate . . . importation” authorizes the President to impose tariffs because Congress ratified *United States v. Yoshida International, Inc.*, 526 F.2d 560 (C.C.P.A. 1975). U.S. Br. 26-27. That is wrong.

Yoshida concerned the legality of President Nixon's imposition of a surcharge on certain imported goods that were subject to tariff rates set by Congress but had previously been subject to tariff concessions. *See Yoshida II*, 526 F.2d at 567. The surcharge increased the tariff rates for those goods, but only up to (and not above) the rates set by Congress. *Id.* at 568, 577. When announcing and later rescinding the tariffs, President Nixon invoked the Tariff Act of 1930 and the Trade Expansion Act of 1962 as his sources of authority. *Id.* at 569; 36 Fed. Reg. 15,724; 36 Fed. Reg. 24,201. But when an importer filed a refund action in the U.S. Customs Court (the predecessor to the Court of International Trade), alleging that the tariffs had been imposed without authorization, the U.S. Department of Justice argued that the tariffs were also authorized under Section 5(b) of TWEA. *Yoshida I*, 378 F. Supp. at 1157.³

A three-judge panel of the Customs Court held that Section 5(b) of TWEA did not authorize the imposition of tariffs, but the Court of Customs and Patent Appeals (the predecessor to the Federal Circuit) reversed, concluding that Section 5(b) authorized President Nixon's particular import surcharge, even if

³ Congress later disallowed post hoc invocations of statutory authority to exercise emergency powers. *See* 50 U.S.C. § 1631.

it did not authorize an “unlimited” exercise of tariff power. *Id.* at 1171-1172, *rev’d*, *Yoshida II*, 526 F.2d at 576, 583.

The Court of Customs and Patent Appeals’ decision is unpersuasive on its own terms. The court did not undertake any analysis of the statutory text that would pass muster under this Court’s current precedent: the court did not address the plain meaning of the words “regulate . . . importation” or their place in the statutory scheme. Instead, the court relied primarily on “the intent of Congress” and “the broad purposes of [TWEA].” *Yoshida II*, 526 F.2d at 583. That approach contravenes modern principles of statutory interpretation. *See, e.g., Jimenez v. Quarterman*, 555 U.S. 113, 118 (2009) (“statutory interpretation . . . begins with the plain language of the statute”).

And the Court of Customs and Patent Appeals took the wrong signal from the lack of legislative history indicating congressional intent to delegate tariff authority to the President. *See Yoshida II*, 526 F.2d at 572-573, 576. That silence is no basis for inferring a broad delegation of a core legislative power; if anything, it suggests that Congress did not delegate tariff authority to the President. *See, e.g., Encino Motorcars, LLC v. Navarro*, 584 U.S. 79, 90 (2018) (“silence in the legislative history cannot lend any clarity” to statute’s meaning); *Commodity Futures Trading Comm’n v. Nahas*, 738 F.2d 487, 493 (D.C. Cir. 1984) (declining to “infer the existence of [a] power” from “an uninformative legislative history”); *Yoshida I*, 378 F. Supp. at 1182 (Maletz, J., concurring) (“[N]owhere in the Congressional debates, committee hearings or reports on section 5(b) and the

amendments thereto is there even a glimmer of a suggestion that Congress ever intended—or even considered—this section as a vehicle for delegating any of its tariff-making authority.”).

The Court of Customs and Patent Appeals also failed to adequately account for congressional action in the wake of President Nixon’s surcharge order. While *Yoshida* was pending, Congress passed Section 122 of the Trade Act of 1974, which specifically authorized (and also circumscribed) the very kind of tariffs that President Nixon had imposed. Pub. L. No. 93-618, 88 Stat. 1978 (1975); 19 U.S.C. §§ 2132(a), 2411(c)(1)(B). Congress would have had no reason to enact Section 122 if it thought that Section 5(b)’s authorization to “regulate . . . importation” allowed the President to impose tariffs. The court noted this development and acknowledged that any future surcharge “must comply” with the Trade Act, though it declined to consider the Act’s relevance to the interpretive question before it. *See Yoshida II*, 526 F.2d at 582 n.33.

In any event, *Yoshida* does not resolve the question at hand because the ratification canon has no place here. For one thing, the ratification canon fails to overcome an interpretation compelled by the text, statutory context, and every other canon of statutory construction. *See Oklahoma v. Castro-Huerta*, 597 U.S. 629, 644 (2022) (“the reenactment canon does not override clear statutory language”). For another, ratification applies only when the prior statutory text has a “settled construction” adopted by a “judicial consensus so broad and unquestioned that [the Court] must presume Congress knew of and endorsed it.” *Jama v. Immigr. & Customs Enf’t*, 543 U.S. 335, 349 (2005). As this Court has warned, it is “most unlikely”

that “a smattering of lower court opinions could ever represent” such a broad consensus—let alone a single lower court opinion, as here. *BP v. Mayor & City Council of Balt.*, 593 U.S. 230, 244 (2021).

But even if Congress could be assumed to have ratified *Yoshida*, the court’s decision applied only retroactively to a statutory regime that had changed by the time the decision issued and IEEPA was enacted, and so does not resolve the meaning of “regulate . . . importation” as used in IEEPA. *See Yoshida II*, 526 F.2d at 577 (making clear its holding did not “approve in advance any future surcharge of a different nature”). *Yoshida*’s reasoning relied on the absence of a specific statute governing tariffs addressed at a balance-of-payments problem. *Id.* at 578. As explained, *see supra* p. 19, that changed when Congress passed Section 122 of the Trade Act of 1974 to address precisely such circumstances. Pub. L. No. 93-618, 88 Stat. 1978 (1975). *Yoshida* declined to address how Section 122 would affect its analysis, and it observed that any future tariffs of this kind “must, of course, comply with the statute now governing such action.” 526 F.2d at 582 n.33. This restriction on prospective application of the decision undermines its relevance to the meaning of IEEPA.

V. THE MAJOR QUESTIONS DOCTRINE CONFIRMS THAT IEEPA DOES NOT AUTHORIZE THE PRESIDENT TO IMPOSE TARIFFS

IEEPA’s text, context, and history make clear that it does not provide for tariffs, and this Court can hold the tariff orders unlawful on that basis alone. But if the Court has any doubts, the major questions doctrine reinforces that IEEPA does not provide for tariffs.

In the half-century since IEEPA’s enactment, no President until now has imposed tariffs under IEEPA. Yet, the federal government now contends that IEEPA permits the President to impose, revise, or rescind tariffs on any goods, from any country, at any rate, at any time, for any duration, to address any situation he declares to be a national emergency, regardless of any other tariff rates Congress has set, tariff requirements Congress has imposed, or trade agreements that Congress has ratified. And the federal government further contends that power is not subject to judicial review. *See, e.g.,* U.S. Br. 42. That claim to unbounded power stands in stark contrast to—and could be used to override—the careful limits that Congress has imposed in all other delegations of tariff authority. *See supra* p. 4; *Yoshida I*, 378 F. Supp. at 1182 (Maletz, J., concurring) (“[A] finding that the President has the power under section 5(b) to impose whatever tariff rates he deems desirable simply by declaring a national emergency would not only render our trade agreements program nugatory, it would subvert the manifest Congressional intent to maintain control over its Constitutional powers to levy tariffs.”).

Courts “expect Congress to speak clearly” when a President “‘claim[s] to discover in a long-extant statute an unheralded power’ representing a ‘transformative expansion in . . . authority’ with ‘vast economic and political significance.’” *West Virginia*, 597 U.S. at 716, 724; *see also Nebraska v. Su*, 121 F.4th 1, 14 (9th Cir. 2024). The notion that Congress delegated the power to impose unbounded, devastating tariffs that could completely restructure international relations through the phrase “regulate . . . importation,” in the context of a list of seven other verbs and eleven other objects, cannot be squared with the major-questions doctrine (or any other interpretive principle). *See West*

Virginia, 597 U.S. at 723 (“Extraordinary grants of regulatory authority are rarely accomplished through ‘modest words,’ ‘vague terms,’ or ‘subtle device[s].’”); *id.* at 732 (“Such a vague statutory grant is not close to the sort of clear authorization required.”); *Ala. Ass’n of Realtors v. Dep’t of Health & Hum. Servs.*, 594 U.S. 758, 764-765 (2021) (per curiam) (rejecting government’s broad interpretation of statute as “a wafer-thin reed on which to rest such sweeping power”); *see also Whitman*, 531 U.S. at 468 (Congress “does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions.”); *cf. Fed. Commc’ns Comm’n v. Consumers’ Rsch.*, 145 S. Ct. 2482, 2497 (2025) (“The ‘guidance’ needed is greater . . . when an agency action will ‘affect the entire national economy’ than when it addresses a narrow, technical issue.”).

The federal government argues (U.S. Br. 36) that the major questions doctrine does not apply to the President, but its reasoning is unpersuasive. The major questions doctrine is not based solely on political accountability. *Contra* U.S. Br. 36. It protects “separation of powers principles,” which are implicated by congressional delegations to the President and agencies alike. *West Virginia*, 597 U.S. at 723; *see id.* at 739 (Gorsuch, J., concurring) (referring to “Executive Branch” and “President”); *see, e.g., Louisiana v. Biden*, 55 F.4th 1017, 1031 n.40 (5th Cir. 2022) (“[D]elegations to the President and delegations to an agency should be treated the same under the major questions doctrine.”); *Su*, 121 F.4th at 17-20 (R. Nelson, J., concurring).

The doctrine also promotes “a practical understanding of legislative intent.” *West Virginia*, 597 U.S.

at 723; *see Biden v. Nebraska*, 600 U.S. 477, 511 (Barrett, J., concurring) (“The doctrine serves as an interpretive tool” that “situates text in context.”). The “normal interpretive process” does not “turn on the identity of the Executive Branch officer to whom Congress delegated power.” *Su*, 121 F.4th at 19 (R. Nelson, J., concurring). “An implausible reading of a statute is no less implausible when that statute confers authority on the President versus an agency.” *Id.* at 19-20.

“Distinguishing between presidential and agency delegations also ignores the realities of administrative decision-making.” *Su*, 121 F.4th at 19 (R. Nelson, J., concurring). “[M]ajor policies” almost always follow from the President’s close involvement, “even if they are ultimately promulgated by an agency.” *Id.* And the claimed delegation here—the power to impose tariffs—concerns a core legislative power under Article I, not an area where the President has constitutional authority. *Contra* U.S. Br. 34-35.

* * *

The plaintiffs before the Court have advanced multiple compelling arguments as to why the tariffs imposed under the auspices of IEEPA are unlawful. And California would welcome affirmance of either the D.C. district court’s holding that IEEPA does not authorize the President to impose any tariffs whatsoever, *see* Learning Res. Pet. App. 35a-36a, or the en banc Federal Circuit’s holding that, even assuming IEEPA delegates some tariff authority to the President, tariffs “unbounded in scope, amount, and duration” exceed any such delegation, *see* V.O.S. Pet. App. 42a. But in California’s view, the former is the more straightforward and administrable way for this Court to resolve the cases before it. The conclusion that

IEEPA does not authorize the President to impose tariffs follows from the text, statutory context, statutory history, historical practice, and constitutional doctrines. It requires no interrogation of the details of the particular tariffs at issue, other than the statute invoked for their issuance, or of the asserted justifications for their imposition. And it leaves room for Congress to respond with a delegation of tariff authority if it wishes.

CONCLUSION

The Court should hold that IEEPA does not authorize the President to impose tariffs.

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