

In the Supreme Court of the United States

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL.,
Petitioners,

v.

V.O.S. SELECTIONS, INC., ET AL.,
Respondents.

LEARNING RESOURCES, INC., ET AL.,
Petitioners,

v.

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL.,
Respondents.

**On Writ of Certiorari Before Judgment to the United
States Court of Appeals for the District of Columbia and on
Writ of Certiorari to the United States Court of Appeals for
the Federal Circuit**

**BRIEF OF AMICI CURIAE ADVANCING AMERICAN FREEDOM;
FRONTLINE POLICY COUNCIL; INDEPENDENT INSTITUTE;
INSTITUTE FOR POLICY INNOVATION; ET AL.
IN SUPPORT OF RESPONDENTS IN NO. 25-250
AND PETITIONERS IN NO. 24-1278
(Additional Amici Curiae Listed on Inside Cover)**

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QUESTIONS PRESENTED

1. Whether the International Emergency Economic Powers Act (IEEPA), Pub. L. No. 95-223, Tit. II, 91 Stat. 1626, authorizes the tariffs imposed by President Trump pursuant to the national emergencies declared or continued in Proclamation 14,157, 14,193, 14,194, 14,195, and 14,257, as amended.
2. If IEEPA authorizes the tariffs, whether the statute unconstitutionally delegates legislative authority to the President.
3. Whether the district court in No. 24-1287 lacked subject-matter jurisdiction.

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STATEMENT OF INTEREST OF AMICI CURIAE

Advancing American Freedom (AAF) is a nonprofit organization that promotes and defends policies that elevate traditional American values, including freedom from arbitrary power.¹ AAF “will continue to serve as a beacon for conservative ideas, a reminder to all branches of government of their responsibilities to the nation,”² and believes American prosperity depends on ordered liberty and self-government.³ AAF files this brief on behalf of its 144,819 members nationwide.

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¹ No counsel for a party authored this brief in whole or in part. No person other than Amicus Curiae and its counsel made any monetary contribution intended to fund the preparation or submission of this brief.

² Edwin J. Feulner, Jr., *Conservatives Stalk the House: The Story of the Republican Study Committee*, 212 (Green Hill Publishers, Inc. 1983).

³ Independence Index: Measuring Life, Liberty and the Pursuit of Happiness, Advancing American Freedom available at <https://advancingamericanfreedom.com/aaff-independence-index/>.

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INTRODUCTION AND SUMMARY OF THE ARGUMENT

Government officials may not alter the structures created by the Constitution except by following the procedures the Constitution itself establishes for its own amendment. When those in government attempt to do so, they act beyond their legitimate power and usurp the powers “reserved to

the States respectively, or to the people.” U.S. Const. art. X. The courts serve as a backstop to overreach by the political branches, a last line of defense for the people’s liberty. This Court must play that role here.

The International Emergency Economic Powers Act (IEEPA) provides that the President may “investigate, regulate, or prohibit” large swaths of international trade including “any transactions in foreign exchange.” 50 U.S.C. § 1702(a)(1)(A). These powers, however, “may only be exercised to deal with an unusual and extraordinary threat with respect to which a national emergency has been declared for purposes of this chapter and may not be exercised for any other purpose.” 50 U.S.C. § 1701(b). Claiming to exercise these powers, President Trump has “imposed tariffs of unlimited duration on nearly all goods from nearly every country in the world,” *V.O.S. Selections, Inc. v. Trump*, No. 25-1812 slip op. at 5 (Fed. Cir. Aug. 29, 2025), and has repeatedly and unilaterally modified the rates of those tariffs.

The powers asserted by the President in this case are not within the constitutional authority of the Executive Branch. Rather, they belong to Congress, which cannot delegate them to the President. The President’s exercise of power here is thus either outside the scope of the power granted by Congress through IEEPA or IEEPA is an unconstitutional delegation of power reserved exclusively to the legislative branch. Either way, the decisions of the courts below striking down the President’s tariffs should be affirmed.

The major questions doctrine, which holds that Congress must be explicit and clear when a matter of

constitutional importance is in dispute, is one tool courts use to ensure that Congress and the President stay within their constitutional bounds and is relevant in this case. However, the nondelegation doctrine more directly addresses the constitutional malady here. “The nondelegation doctrine bars Congress from transferring its legislative power to another branch of Government,” *Gundy v. United States*, 588 U.S. 128, 132 (2019) (plurality opinion), precisely because the founders understood that important policy decisions should be the result of a deliberative process and should pass only with the support of a legislative coalition representing a broad swath of the nation’s population.

This Court has recognized that principle in its nondelegation doctrine, requiring that Congress provide the executive branch with an intelligible principle to guide the President’s executive action. *Consumers’ Research*, No. 24-354, slip op. at 10-11 (June 27, 2025). If IEEPA’s language did grant to the President the power over tariffs he has claimed, it would violate the nondelegation doctrine because, as the executive has effectively conceded in its briefs before this Court and below, IEEPA does not contain an intelligible principle to guide either the President’s declaration of an emergency or his implementation of tariffs.

Further, despite the Executive’s claims, the fact that tariffs may be used as a tool of foreign affairs does not lessen the force of the nondelegation doctrine’s limitations on the President’s asserted tariff power. The powers the President is exercising, along with several other foreign affairs powers, belong

exclusively to Congress under the Constitution and there is no foreign affairs exception to the separation of powers.

Finally, if the Court were to uphold the President's assertion of legislative power in this case, it would effectively turn the constitutional amendment process on its head. IEEPA, as misinterpreted by the President, vests legislative power in the President, something only a constitutional amendment could do. Without judicial intervention, it would likely take a veto-proof majority to amend or repeal IEEPA—the same two-thirds majority necessary for Congress to propose a constitutional amendment to the states for ratification.

The questions at issue in this case are clear and the constitutional harm both to the small businesses that brought these cases in particular and Americans in general is incalculable. This Court should strike down the President's tariffs.

ARGUMENT

I. The President's Interpretation of IEEPA Would Violate the Nondelegation Doctrine as it Has Been Applied by the Court.

The Constitution vests “[a]ll legislative Powers” of the national government “in a Congress of the United States.” U.S. Const. art. I, § 1. For good reason, Congress is not empowered to delegate that power to any other entity.

A. The powers to tax and regulate commerce are legislative powers entrusted to Congress by the Constitution.

The federal government is one of enumerated powers,⁴ and enumeration implies limitation. *Gibbons v. Ogden*, 22 U.S. 1, 195 (1824). The Constitution vests “all legislative powers” of the federal government in “a Congress of the United States.” U.S. Const. art. I, § 1.

Legislative power is “the power to adopt generally applicable rules of conduct governing future actions by private persons—the power to ‘prescribe the rules by which the duties and rights of every citizen are to be regulated,’ or the power to ‘prescribe general rules for the government of society.’” *Gundy*, 588 U.S. at 153 (Gorsuch, J., dissenting) (quoting *The Federalist* No. 78, p. 465 (C. Rossiter ed. 1961) (A. Hamilton)); *Fletcher v. Peck*, 6 Cranch 87, 136 (1810)).

Alexander Hamilton explained that legislative power is the power that “not only commands the purse but prescribes the rules by which the duties and rights

⁴ *The Federalist* No. 45 at 241 (James Madison) (George Carey & James McClellan eds., The Liberty Fund 2001) (“The powers delegated by the proposed constitution to the federal government, are few and defined.”). *McCulloch v. Maryland*, 17 U.S. 316, 405 (1819) (The federal “Government is acknowledged by all to be one of enumerated powers. The principle that it can exercise only the powers granted to it would seem too apparent to have required to be enforced by all those arguments which its enlightened friends, while it was depending before the people, found it necessary to urge.”). The Constitution, “rather than granting general authority to perform all the conceivable functions of government,” “lists, or enumerates, the Federal Government’s powers.” *Nat’l Fed’n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 534 (2012). An “enumeration of powers is also a limitation of powers, because ‘[t]he enumeration presupposes something not enumerated.’” *Id.* at 534 (quoting *Gibbons v. Ogden*, 22 U.S. 1, 9 (1824)) (alteration in original).

of every citizen are to be regulated,”⁵ one of which “is the power of laying and collecting taxes.”⁶ According to Blackstone, “Legislators and their laws are said to compel and oblige.”⁷ As Professor Philip Hamburger explains:

[T]he natural dividing line between legislative and nonlegislative power was between rules that bound subjects and those that did not . . . It therefore was assumed that the enactment of legally binding rules could come only from a representative legislature and that the resulting rules could bind only subjects, not other peoples . . . [T]he executive could not make rules or duties that bound subjects, for these were legislative.⁸

The Constitution grants the national government’s legislative powers to Congress alone because the framers “believed the new federal government’s most dangerous power was the power to enact laws restricting the people’s liberty.” *Gundy v. United States*, 588 U.S. 128, 154 (2019) (Gorsuch, J., dissenting). According to James Madison, there are two means of securing the liberty of the people against

⁵ Federalist No. 78 at 383 (Alexander Hamilton) (George Carey & James McClellan eds., The Liberty Fund 2001).

⁶ See, Federalist No. 33 at 160 (Alexander Hamilton) (George Carey & James McClellan eds., 2001) (What is the power of laying and collecting taxes, but a legislative power, or a power of making laws, to lay and collect taxes?”).

⁷ *Id.* (internal quotation marks omitted).

⁸ *Id.*

government abuse. “[T]he primary control on the government” is “a dependence on the people,” but, he explained, experience had “taught mankind the necessity of auxiliary precautions.”⁹

The most immediate source of the federal government’s “dependence on,” or accountability to, the people is the biennial election of members of the House of Representatives. Because the vast majority of members seek reelection,¹⁰ the American people in general have an opportunity every other November to hold Congress accountable in a meaningful way.

Because popular accountability is not always sufficient to restrain government excess, the Constitution’s structural limits on power act as “auxiliary precautions.”¹¹ At the Founding, it was the “facility and excess of lawmaking” that “seem[ed] to be the diseases to which our governments [were] most liable.”¹² As a cure to those “diseases,” “the framers went to great lengths to make lawmaking difficult.” *Gundy*, 588 U.S. at 154 (Gorsuch, J., dissenting). While, “[s]ome occasionally complain about the arduous processes for new legislation,” “to the framers these were bulwarks of liberty.” *Id.*

⁹ Federalist No. 51 (James Madison) (George Carey & James McClellan eds., The Liberty Fund 2001).

¹⁰ “Going back 80 years, the average number of House open seats has been 35,” or less than 10% of the Houses members. *House retirements so far are at a historic low*, Roll Call (July 9, 2025 3:19 PM) <https://rollcall.com/2025/07/09/house-open-seats-retirements-midterm-elections/>.

¹¹ Madison, Federalist No. 51 *supra* note 9 at 269.

¹² Federalist No. 62, 321-22 (James Madison) (George Carey & James McClellan eds., The Liberty Fund 2001).

These “arduous processes” “were also designed to promote deliberation,” *id.*, because, “[t]he oftener a measure is brought under examination, the greater the diversity in the situations of those who are to examine it, the less must be the danger of those errors which flow from want of due deliberation, or of those missteps which proceed from the contagion of some common passion or interest.”¹³

Thus, vesting legislative power in Congress helped secure the liberty of the people by allowing for popular accountability and facilitating deliberative and careful lawmaking. Should the President exercise legislative power, those protections would be undermined. First, it is much more difficult for the people to hold the President accountable, and even more so when the President is in his second term. Second, the President is not necessarily constrained by any deliberative process. For these reasons, it is essential that Congress alone be allowed to exercise the legislative power of the federal government.

Congress’s core legislative powers are enumerated in Article I, Section 8, of the Constitution. The first of those powers is, “To lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States.” U.S. Const. art. I, § 8, cl. 1. Further, this power is limited by the requirement that “All bills for raising revenue shall originate in the House of Representatives.” U.S. Const. art. I, § 7, cl. 1. The third power listed in Section 8 is “To regulate commerce with foreign nations, and among the several

¹³ Federalist No. 73, 381-82 (Alexander Hamilton) (George Carey & James McClellan eds., The Liberty Fund 2001).

states, and with the Indian tribes.” U.S. Const. art. I, § 8, cl. 3.

That the power to tax is listed first among Congress’s powers is no accident. The inability of the national government under the Articles of Confederation to raise revenue was the impetus for the constitutional convention.¹⁴ But the Framers of the Constitution also knew, as the Court would later say, “[t]hat the power to tax involves the power to destroy.” *McCulloch v. Maryland*, 17 U.S. 316, 431 (1819). Among the founding generation’s complaints against British rule was that King George III had “impos[ed] taxes on us without our consent.” The Declaration of Independence para. 19 (U.S. 1776). When the Framers designed America’s system of government, they consciously kept the taxing power close to the people and far from unilateral control.

Further, while tariffs are certainly a tool of foreign affairs, they are also of great domestic concern. Americans, after all, pay tariffs. American importers pay the duties themselves and then, as Alexander

¹⁴ See, e.g., James Madison, *Preface to Debates in the Convention, The Founders’ Constitution*, art. I, § 8, cl. 1, https://press-pubs.uchicago.edu/founders/documents/a1_8_1s2.html (Last visited Oct. 24, 2025) (“At the date of the Convention, the aspect & retrospect of the pol: condition of the U.S. could not but fill the pub. mind with a gloom which was relieved only by a hope that so select a Body would devise an adequate remedy for the existing and prospective evils so impressively demanding it. It was seen that the public debt rendered so sacred by the cause in which it had been incurred remained without provision for its payment. The reiterated and elaborate efforts of Cong. to procure from the States a more adequate power to raise the means of payment had failed.”).

Hamilton understood, it is usually the case that the “consumer is the payer.”¹⁵ Tariffs effect on foreign relations, then, is the secondary effect of reduced demand for foreign goods resulting from higher prices. It is unsurprising, then, that the Framers of the Constitution vested this foreign affairs power in the deliberative body of Congress, rather than in the “energetic Executive.”¹⁶

Tariffs are legislative in nature because they are binding on Americans seeking to purchase goods from overseas, restricting their liberty to do so.¹⁷ And, whether tariffs are taxes or a form of regulation of commerce with foreign nations, the Constitution vests

¹⁵ Federalist No. 35 at 168 (Alexander Hamilton) (George Carey & James McClellan eds., 2001).

¹⁶ Federalist No. 70, at 363 (Alexander Hamilton) (George W. Carey and James McClellan, eds., The Liberty Fund 2001).

¹⁷ The Executive effectively acknowledged that the President is claiming legislative power in its briefing at the Court of International Trade (CIT). There, the Executive quoted the *Gundy* plurality opinion as follows: “The nondelegation doctrine bars Congress from *transferring its legislative power* to another branch of Government’ *without supplying* ‘an intelligible principle to guide the delegate’s use of discretion.’” Defendants’ Response to Motion for Summary Judgment and Preliminary Injunction at 46, *V.O.S. Selections Inc. v. Trump*, No. 25-00066 (CIT, April 21, 2025) (emphasis added) (quoting *Gundy*, 588 U.S. at 132, 135 (plurality opinion)). However, this quotation combines two different lines several pages apart. By combining these two lines as it did, the Executive effectively admitted that it was defending a supposed delegation of *legislative* power. In other words, below, the Executive argued that all Congress must do in order to delegate *legislative* power is to provide an intelligible principle. The Executive’s brief before this Court no longer contains this implicit admission, but the facts have not changed. That admission alone is sufficient to find that the President’s asserted tariff authority is unconstitutional.

the power to enact them explicitly and exclusively in Congress.

B. If the President’s interpretation of IEEPA were correct, the statute would violate the nondelegation doctrine as it has been applied by the Court.

The Constitution’s vesting of all legislative power in Congress “is a bar on [that power’s] further delegation.” *FCC v. Consumers’ Research*, No. 24-354, slip op. at 10 (June 27, 2025) (citing *Whitman v. American Trucking*, 531 U.S. 457, 472 (2001)). The nondelegation doctrine, the Court’s rule for enforcing this constitutional principle, “bars Congress from transferring its legislative power to another branch of Government.” *Gundy*, 588 U.S. at 132 (opinion of Kagan, J.). *But see, Gundy*, 588 U.S. at 135 (opinion of Kagan, J.) (“The constitutional question is whether Congress has supplied an intelligible principle to guide the delegatee’s use of discretion.”).

To police the boundary between laws that legitimately empower the President to take executive action and laws that improperly delegate legislative power to the executive, the Court has held that Congress must “lay down . . . an intelligible principle to which the person or body authorized” to exercise the power in question must “conform.” *J.W. Hampton, Jr., & Co. v. United States*, 276 U.S. 394 (1928). While the intelligible principle test has, at times, allowed Congress to empower the President with “extraordinarily capacious standards,” *Gundy*, 588 U.S. at 149 (Alito, J., concurring), the fundamental prohibition remains clear: “No one, not even Congress, ha[s] the right to alter [the constitutional] arrangement” of powers. *Id.* 588 U.S. at 153 (Gorsuch,

J., dissenting). “Our Members of Congress could not, even if they wished, vote all power to the President and adjourn *sine die*.” *Mistretta v. United States*, 488 U.S. 361, 415 (1989) (Scalia, J., dissenting).

As the Court recently explained, “[t]he ‘guidance’ needed [from Congress] is greater . . . when an agency action will ‘affect the entire national economy’ than when it addresses a narrow, technical issue.” *Consumers’ Research*, No. 24-354, slip op. at 11 (June 27, 2025) (quoting *Whitman*, 531 U.S. at 475). Congress must make clear “both ‘the general policy’ that the agency must pursue and ‘the boundaries of [its] delegated authority.’” *Id.* (alteration in original) (quoting *American Power & Light Co. v. SEC*, 329 U.S. 90, 105 (1946)). The Court also considers whether “Congress has provided sufficient standards to enable both ‘the courts and the public [to] ascertain whether the agency’ has followed the law.” *Id.* (alteration in original) (quoting *OPP Cotton Mills, Inc. v. Administrator of Wage and Hour Div., Dep’t of Labor*, 312 U.S. 126, 144 (1941)).

While it is true that the Court has applied the nondelegation doctrine loosely, *Gundy*, 588 U.S. at 146 (plurality opinion) (“Those standards, the Court has made clear, are not demanding.”), the Executive’s own argument and the President’s repeated actions show that the unilateral tariffs fail the doctrine’s standards.

First, the Executive claims that “Congress itself extensively oversees the President’s exercise of authority in this area.” Opening Brief for the Respondents in No. 24-1287 and the Petitioners in 25-250 at 46 *Learning Resources v. Trump*, No. 24-1287; *Trump v. V.O.S. Selections, Inc.*, No. 25-250 (Sept. 19, 2025). But the existence of mechanisms for

congressional review of an executive exercise of legislative power does not make that exercise of power constitutional.¹⁸ The nondelegation doctrine exists to ensure that Congress, not the Executive, makes law.

Second, the Executive effectively concedes that IEEPA does not provide “sufficient standards to enable both ‘the courts and the public [to] ascertain whether the agency’ has followed the law.” *Id.* (alteration in original) (quoting *OPP Cotton Mills, Inc. v. Administrator of Wage and Hour Div., Dep’t of Labor*, 312 U.S. 126, 144 (1941)). According to the Executive, IEEPA *fails* to provide judicially manageable standards either for the emergency declaration that allegedly empowers the President or his use of that power. Opening Brief for the Respondents in No. 24-1287 and the Petitioners in 25-250 at 40, 42-43 *Learning Resources v. Trump*, No. 24-1287; *Trump v. V.O.S. Selections, Inc.*, No. 25-250 (Sept. 19, 2025) (claiming that “whether a given action in fact ‘deals with’ an identified threat or emergency in the areas of foreign affairs and national security is a question that resists meaningful judicial review because of its discretion-laden nature and the lack of judicially manageable standards;” and that “[i]t is unclear how courts could meaningfully review an

¹⁸ Further, not only are the relevant congressional review mechanisms irrelevant, but they are also often of little practical use. Congressional action is difficult by design. *Gundy*, 588 U.S. at 154 (Gorsuch, J., dissenting). That difficulty is likely to be exacerbated when the political party of the President controls both chambers of Congress. Congressional inaction is also incentivized when the President adopts a controversial policy. Thus, Congress’s *de jure* ability to review presidential decisions does not, on its own, provide ample protection of constitutional structure.

emergency declaration or determination of an unusual and extraordinary threat.”). In its discussion of the requirements of the nondelegation doctrine, the Executive quotes the requirement that courts and the public be able to determine that the executive followed the law, but, rather than claiming that that requirement is met here, simply enumerates again the supposed limitations on the President’s authority that it has just argued are *not* reviewable by the courts. *See*, Opening Brief for the Respondents in No. 24-1287 and the Petitioners in 25-250 at 40, 42-43 *Learning Resources v. Trump*, No. 24-1287; *Trump v. V.O.S. Selections, Inc.*, No. 25-250 (Sept. 19, 2025).

That IEEPA supposedly vests the President with such vast but undefined power demonstrates that the questions the President claims authority to decide here are legislative decisions reserved to Congress by the Constitution. Courts are not constitutionally competent to assess the wisdom of the of the political branches’ policy decisions. On the other hand, it is their core function to determine whether the application of a law is consistent with the letter of the law and with the Constitution. If a statute is too vague for courts to exercise meaningful review of its application, then it must also insufficiently guide the President’s execution. Because IEEPA does not provide an intelligible principle to guide the President’s exercise of his asserted tariff authority, as the Executive’s argument effectively concedes, that exercise of authority cannot survive the nondelegation doctrine.

II. The President’s Interpretation of IEEPA Falls Far Short of the Bar Set by a Constitutionally Robust Nondelegation Doctrine.

The nondelegation doctrine, properly applied, sets a high bar for congressional direction of presidential action which IEEPA, as interpreted by the Executive, cannot clear. When the Court first used the term “intelligible principle” in 1928, “No one . . . thought the phrase meant to effect some revolution in this Court’s understanding of the Constitution.” *Gundy*, 588 U.S. at 162 (Gorsuch, J., dissenting). The difficulty in some cases of determining “the exact line between policy and details, law-making and fact-finding, and legislative and non-legislative functions” does not undermine the fact that “these [are] the relevant inquiries.” *Id.*

“That Congress cannot delegate its 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 Constitution.” *Marshall Field & Co. v. Clark*, 143 U.S. 649, 692 (1892). The Court echoed this sentiment again in 1935, writing, “The Congress is not permitted to abdicate or to transfer to others the essential legislative functions with which it is thus vested.” *A.L.A. Schechter Poultry Corporation v. United States*, 295 U.S. 495, 529-30 (1935).

Justice Gorsuch has explained how the Court can apply the nondelegation doctrine in a way that is more faithful to the Constitution’s separation of powers:

To determine whether a statute provides an intelligible principle, [courts] must ask: Does the statute assign to the

executive only the responsibility to make factual findings? Does it set forth the facts that the executive must consider and the criteria against which to measure them? And most importantly, did Congress, and not the Executive Branch, make the policy judgments? Only then can we fairly say that a statute contains the kind of intelligible principle the Constitution demands.

Gundy, 588 U.S. at 166 (Gorsuch, J., dissenting). If, for all of the reasons discussed above in Section I, the President's assertion of tariff authority under IEEPA fails to clear the bar set by the Court's relatively permissive reading of the intelligible principle test, then it surely fails to clear this more robust and constitutional bar.

First, IEEPA, according to the President's interpretation, does more than empower him to make findings of fact. The President must begin by determining whether the situation in question amounts to "unusual and extraordinary circumstances" justifying the declaration of a national emergency. As argued above, this is a policy rather than a factual determination because it is too vague to allow for meaningful judicial review.

Second, IEEPA, according to the President's interpretation, does not meaningfully guide the President's consideration of facts. What facts constitute an unusual and extraordinary circumstance? How should the President assess those facts? Which facts must the President consider when determining which countries' goods will be tariffed? Which facts must the President consider when

determining the tariff rate he will impose? What facts must the President consider when determining the duration of the tariffs? What facts must the President consider when determining the objective of the tariff policy? IEEPA does not even begin to define the facts the President must consider for any of these questions.

Third and “most importantly,” IEEPA, according to the President’s interpretation, allows the Executive to make policy judgments of massive import. According to the President’s interpretation of IEEPA, he may unilaterally, and with no meaningful opportunity for either judicial or congressional review, determine what constitutes an emergency, the tariffs’ targets, their duration, their rate, and their conditions. He may modify the rates for any reason or for no reason. Under the President’s interpretation of IEEPA, the President’s policy judgments are the supreme law of the land with regard to tariffs.

The President’s unreviewable determination that there is a national emergency unlocks, according to the Executive, vast powers that the Court of International Trade rightly called “unbounded.” *V.O.S. Selections, Inc. v. United States*, No. 25-00066 (CIT, May 28, 2025). There appears to be no principle in the Executive’s interpretation that would prevent the President from banning all international trade, indefinitely.

Such decisions are legislative policy decisions reserved to Congress in Article I. If the President’s interpretation of IEEPA were correct, it would be “delegation running riot.” *Gundy*, 588 U.S. at 161 (Gorsuch, J., dissenting) (internal quotation marks omitted) (quoting *Schechter Poultry*, 295 U.S. at 553 (Cardozo, J., concurring)).

III. There is no Foreign Affairs Exception to the Separation of Powers.

In its brief, the Executive Branch insists that the President's interpretation of IEEPA, and thus his tariffs, deserve judicial deference because they are in the realm of foreign affairs. This argument undermines the Constitution and overreads this Court's precedents.

A. The powers at issue in this case are within Congress's, not the President's, constitutional authority.

The President argues that the nondelegation doctrine should play virtually no role in the Court's consideration of this case because the powers at issue here are in the realm of foreign affairs. Opening Brief for the Respondents in No. 24-1287 and the Petitioners in 25-250 at 44-45 *Learning Resources v. Trump*, No. 24-1287; *Trump v. V.O.S. Selections, Inc.*, No. 25-250 (Sept. 19, 2025). Rather than considering the nature and constitutional vesting of the specific powers at issue here, the Executive insists, the Court should treat the whole category of "foreign affairs" as a no go zone for judicial separation of powers analysis. The Constitution's language and structure require the opposite.

The power at issue in this case is not the power to direct America's foreign affairs, generally. At issue in this case are the powers of taxation and commerce regulation which are specifically vested in Congress in Article I, Section 8 of the Constitution. Despite these powers' clear relation to foreign affairs, the Framers of the Constitution thought it wise to entrust them to

the deliberative, lawmaking branch of government. These powers are, after all, legislative in nature.

Nor is the Constitution's vesting of these "foreign affairs" powers in Congress exceptional. Congress has the power "To declare war, grant letters of marque and reprisal," "To raise and support armies," "To provide and maintain a navy," "To provide for calling forth the militia to execute the laws of the union, suppress insurrections and repel invasions." U.S. Const. art. I, § 8.

The President, on the other hand, is "commander in chief of the Army and Navy," may negotiate treaties, must nominate and appoint ambassadors and "shall receive ambassadors and other public ministers." U.S. Const. art. II, §§ 2-3. However, three of these four powers depend on some degree of congressional action. Although the President is the "commander in chief of the Army and Navy," Congress, alone, has the power to declare war. Although the President may negotiate treaties, they must be approved by a supermajority of present Senators. U.S. Const. art. II, § 2. And, although the President must nominate and appoint ambassadors, he may do so only with the "Advice and Consent of the Senate." *Id.* Thus, the Constitution's vesting in Congress of the powers to impose tariffs and regulate foreign commerce is not exceptional.

Further, the founding generation saw taxes on imports and exports as an exercise of the same type of power as taxes internal to the nation. During debates over the ratification of the Constitution, many advocated for taxation on foreign trade, or "external taxation," as preferable to "internal taxation," as a

source of revenue for the national government.¹⁹ Regarding the Constitution itself, the debate was over whether Congress should have been granted authority to issue internal as well as external taxes, or whether it should have been limited to external taxation.²⁰ In other words, the debate was over the desirable extent of the congressional taxing power, demonstrating that “at the founding ‘taxations levied on imports were not a special category of power that Congress shared with, or could share with, the President.’” *V.O.S. Selections, Inc.*, No.25-1812 slip op. at 7, n. 8 (additional views of Cunningham, J.) (quoting Br. of Amici Curiae Advancing American Freedom et al. at 18).

Relying on Justice Robert H. Jackson’s concurrence in *Youngstown Sheet & Tube Co. v. Sawyer*, the Executive argues that the President’s actions at issue here deserve “the strongest of presumptions and the widest latitude of judicial interpretation,” 343 U.S. 679, 637 (1952) (Jackson, J., concurring), because they occur in an area of overlap

¹⁹ See, Federalist No. 30 at 147 (Alexander Hamilton) (George Carey & James McClellan eds., 2001) (“The more intelligent adversaries of the new constitution admit the force of this reasoning; but they qualify their admission by a distinction between what they call *internal* and *external* taxation. The former they would reserve to the State governments; the latter, which they explain into commercial imposts, or rather duties on imported articles, they declare themselves willing to concede to the Federal Head.”).

²⁰ See Federal Farmer No. 3, *The Founders’ Constitution*, Art. I, § 8, cl. 1, https://press-pubs.uchicago.edu/founders/documents/a1_8_1s4.html (Last visited Oct. 17, 2025); An Old Whig No.6, *The Founders’ Constitution*, art. I, § 8, cl. 1, https://press-pubs.uchicago.edu/founders/documents/a1_8_1s5.html (Last visited Oct.17, 2025).

between the President's inherent constitutional authority and authority delegated by Congress. Opening Brief for the Respondents in No. 24-1287 and the Petitioners in 25-250 at 44 *Learning Resources v. Trump*, No. 24-1287; *Trump v. V.O.S. Selections, Inc.*, No. 25-250 (Sept. 19, 2025).

But even if the President does have a general authority over foreign affairs, the Constitution explicitly excludes from his authority the foreign affairs powers it vests in Congress, including the power to impose tariffs, whether as a tax or as a regulation of commerce with foreign nations. U.S. Const. art. I, § 8, cl. 1, 3. The powers the President is exercising in this case are those powers and so there is no overlap between the President's inherent authority and congressionally delegated authority at issue in this case. The only question is whether Congress intended to, and if so, can, delegate its own foreign affairs powers to the President for his unilateral control.

Because congressional delegation of its core legislative powers to the President would “dash the whole [separation of powers] scheme” *Dep't of Transp. v. Ass'n of Am. Railroads*, 575 U.S. 43, 61 (2015), which keeps the people free, Congress may not do so even when the powers in question relate to foreign affairs.

B. The cases upon which the Executive relies do not support the judicial deference it demands.

According to the Executive, “Constitutional ‘limitations’ on Congress’s authority to delegate are thus ‘less stringent in cases where the entity exercising the delegated authority itself possesses

independent authority over the subject matter.” Opening Brief for the Respondents in No. 24-1287 and the Petitioners in 25-250 at 44-45 *Learning Resources v. Trump*, No. 24-1287; *Trump v. V.O.S. Selections, Inc.*, No. 25-250 (Sept. 19, 2025) (quoting *United States v. Mazurie*, 419 U.S. 544, 556-57 (1975)). Although the President does not have independent constitutional authority to impose taxes or regulate trade with foreign nations, the Court has, at times, spoken expansively of Congress’s ability to empower the President.

The broad language in the cases relied on by the Executive, however, are mostly dicta. The Court’s analysis of the statutes at issue in those cases do consistently found meaningful limitations on the power exercised by the President.

Thus, in *Field v. Clark*, 143 U.S. at 691 , the Court wrote that Congress might often find it “desirable, if not essential for the protection of the interests of our people . . . to invest the President with large discretion in matters arising out of the execution of statutes relating to trade and commerce with other nations.” However, the Court made clear that “Congress cannot delegate legislative power to the President,” a principle “universally recognized as vital to the integrity and maintenance of the system of government ordained by the Constitution.” *Id.* at 692.

The Court made clear that the statute in question there, did “not, in any real sense, invest the President with the power of legislation.” *Id.* Rather, “Congress itself determined that” trade should be restricted with “any country . . . that imposed exactions and duties on the agricultural and other products of the United States which the President

deemed—that is, which he found to be—reciprocally unequal and unreasonable.” *Id.* Further, Congress itself *prescribed in advance* the duties to be levied, collected, and paid . . . while the suspension lasted.” *Id.* at 692-93. In other words, despite the Court’s broad language, the statute the Court was considering was valid because Congress made the policy decisions and the President enforced them.

Similarly, in *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304 (1936), the Court wrote:

[I]n the maintenance of our international relations, embarrassment—perhaps serious embarrassment—is to be avoided and success for our aims achieved, congressional legislation which is to be made effective through negotiation and inquiry within the international field must often accord to the President a degree of discretion and freedom from statutory constraint which would not be admissible were domestic affairs alone involved.

Despite the Court’s broad language, the joint resolution at issue in that case was very specific. It related to a specific activity (arms sales) in a specific conflict, allowed the President to issue a proclamation specifically prohibiting arms sales to the countries engaged in the conflict, and set specific penalties for violating the President’s order. *Id.* at 312. The only discretion left to the President was to determine whether “the prohibition of the sale of arms and munitions of war in the United States to those countries” engaged in the conflict “may contribute to the reestablishment of peace between those

countries.” *Id.* As in *Field v. Clark*, Congress determined the policy and empowered the President to enforce it. All the other details were set by Congress. That is not analogous to the Executive’s interpretation of IEEPA here.

In *Zemel v. Rusk*, 381 U.S. 1, 17 (1965), the Court explained that “Congress—in giving the Executive authority over matters of foreign affairs—must of necessity paint with a brush broader than that it customarily wields in domestic areas.” Of these cases, *Zemel* upheld the broadest statutory language. Under the Passport Act of 1926, “The Secretary of State may grant and issue passports . . . under such rules as the President shall designate and prescribe for and on behalf of the United States.” *Id.* at 7-8. In upholding the application of the statute against a delegation claim, the Court in *Zemel* adopted a limiting construction that referred back to Congress’s authority. It wrote that the statute “authorizes only those passport refusals and restrictions ‘which could fairly be argued were adopted by Congress in light of prior administrative practice.’” *Id.* at 18 (quoting *Kent v. Dulles*, 357 U.S. 116, 128 (1958)).

The Court was clear: it is not the case that “simply because a statute deals with foreign relations, it can grant the Executive totally unrestricted freedom of choice.” *Id.* at 17.

In *J.W. Hampton*, the origin of the “intelligible principle test,” Congress “directed the President to ‘investigat[e]’ the relative costs of production for American companies and their foreign counterparts and impose tariffs or duties that would ‘equalize’ those costs.” *Gundy*, 588 U.S. at 163 (Gorsuch, J., dissenting) (alteration in original). Further, Congress’

“also offered guidance on how to determine costs of production, listing several relevant factors and establishing a process for interested parties to submit evidence.” *Id.* The power at issue in *J.W. Hampton*, then, was far narrower than the power claimed by the President in this case and “[t]here’s a good argument . . . that the statute in *J.W. Hampton* passed must under the traditional [separation of powers] tests.” *Id.*

In *Cargo of the Brig Aurora v. United States*, the Court considered, in relevant part, whether Congress could make a statute’s provisions conditional and allow the President to issue a proclamation finding that the necessary conditions had been met. *See* 11 U.S. (7 Cranch) 382, 386 (1813) (Jared Ingersoll arguing for Appellant). The condition in question was whether either France or Great Britain had revoked its own trade barriers against the United States. President Madison issued the statutorily required proclamation on November 2, 1810, finding that “edicts of France violating the neutral commerce of the United States have been so revoked as to cease to have effect, on the first of the present month.”²¹ Thus, rather than having unlimited discretion, the President was empowered only to determine whether particular foreign laws had been repealed.

Finally, in *FEA v. Algonquin SGN, Inc.*, the Court upheld the statute in question finding that the statute “established clear preconditions to Presidential action” and that “the leeway that the

²¹ Presidential Proclamation of James Madison, November 2, 1810 available at <https://founders.archives.gov/?q=Author%3A%22Madison%2C%20James%22%20Dates-From%3A1810-11-02&s=1111311111&r=1&sr=>.

statute gives the President in deciding what action to take in the event the preconditions are fulfilled is far from unbounded.” 426 U.S. 548, 560 (1976). Those boundaries include requiring the President to take into account long list of “standards to guide [him] in making the decision whether to act.” *Id.* n.10.

Unlike these cases, the President claims that his authority under IEEPA is effectively unlimited. If the Court were to uphold his interpretation of the statute, the President would be able to exercise all of Congress’s power over tariffs and regulation of commerce with foreign nations indefinitely and without any limitation short an amendment or repeal of IEEPA passed by a veto-proof majority. Such a situation upends constitutional structure and undermines the freedom of the people.

IV. The President’s Interpretation of IEEPA Would Turn the Constitutional Amendment Process on its Head.

The Constitution requires that two thirds of both chambers of Congress approve a constitutional amendment before that amendment is sent to the states for ratification, unless two thirds of the states call for a constitutional convention. U.S. Const. art. V. As argued above, the President’s interpretation of IEEPA turns the statute into, effectively, an unconstitutional amendment.

If the Court chooses not to strike down the President’s interpretation of IEEPA, the only remaining means of reversing the President’s tariffs would be for Congress to repeal or amend IEEPA to clarify that the President does not have the power he is asserting. However, because the President would

very likely veto any such law, for Congress to restore its constitutional authority, two thirds of both chambers would have to vote in favor of the law. U.S. Const. art. I, § 7, cl. 2. Such veto-proof majorities are difficult to muster by design.

Thus, the implication of the President's reading of IEEPA is that the Congress that passed IEEPA was able to illegitimately amend the Constitution by a bare majority but that to reverse that illegitimate decision, Congress now or in the future would have to meet the initial requirements for a constitutional amendment. That requirement turns the Constitution's amendment process on its head.

The Constitution divides the government's powers against one another to ensure that the liberty of the people is secure. Government officials cannot change that system apart from the established amendment process. Because the President's tariffs rip powers away from Congress that the Constitution reserves exclusively to that branch, this Court should grant the petition for certiorari and find that IEEPA either does not grant the powers asserted or, in the alternative, is an unconstitutional delegation of legislative power to the President.

CONCLUSION

For the foregoing reasons, the Court should rule for Respondents in No. 25-250 and Petitioners in 24-1287.

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