Nos. 24-1287, 25-250

IN THE

Supreme Court of the United States

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

v.

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, *et al.*,
Respondents.

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, *et al.*,
Petitioners,

v.

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

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

BRIEF OF *AMICUS CURIAE* AMERICAN COLLEGE OF TAX COUNSEL IN SUPPORT OF PETITIONERS IN NO. 24-1287 AND RESPONDENTS IN NO. 25-250

THEODORE P. SETO
PROFESSOR OF LAW
Burns 322
919 Albany Street
Los Angeles, CA 90015

JOHN M. COLVIN
Counsel of Record
JASON A. HARN
COLVIN + HALLETT, P.S.
719 Second Avenue,
Suite 711
Seattle, WA 98104
(206) 223-0800
jcolvin@colvinhallettlaw.com

Counsel for Amicus Curiae

120732

TABLE OF CONTENTS

Table of Contents

TABLE OF CITED AUTHORITIES

Page

Cases

Cited Authorities

Page

Cited Authorities

Page

Constitutional Provisions

Statutes

Cited Authorities

Page

Rules

Regulations

Other Authorities

Page

Page

Page

Page

INTEREST OF THE AMICUS[1]

The American College of Tax Counsel (the "College") respectfully submits this brief as amicus curiae in support of the Petitioners in No. 24-1287 and the Respondents in No. 25-250. The College takes no position on trade policy or the wisdom of specific tariff levels. Its interest lies solely in ensuring that judicial interpretations of statutory text conform with established principles of congressional authorization and tax law structure, preserving predictability and uniformity for taxpayers.

The College is a nonprofit professional association of tax lawyers in private practice, in law school teaching positions, and in government, who are recognized for their excellence in tax practice and for their substantial contributions and commitment to the profession. The purposes of the College are:

- To foster and recognize the excellence of its members and to elevate standards in the practice of the profession of tax law;

- To stimulate development of skills and knowledge through participation in continuing legal education programs and seminars;

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

- To provide additional mechanisms for input by tax professionals in development of tax laws and policy; and

- To facilitate scholarly discussion and examination of tax policy issues.

The College is composed of approximately 700 Fellows who are recognized for their outstanding reputations and contributions to the field of tax law. It is governed by a Board of Regents consisting of one Regent from each federal judicial circuit, two Regents at large, the Officers of the College, and the last retiring President of the College. This amicus brief is submitted by the College's Board of Regents and does not necessarily reflect the views of all members of the College, including those who are government employees.

SUMMARY OF ARGUMENT

When it enacted the International Emergency Economic Powers Act ("IEEPA") in 1977, Congress was not exercising its authority to impose taxes and tariffs under Article I, Section 8, clause 1. The IEEPA is not a revenue-raising statute, and its delegation of authority to the Executive cannot be read to permit the President to raise billions or trillions of dollars by unilaterally imposing Reciprocal Tariffs via Executive Order No. 14,257.[2]

2. The tariffs imposed by Executive Order No. 14,257 are collectively referred to in this brief as "Reciprocal Tariffs" because this is how they were referred to by the courts below, though there is nothing "reciprocal" about them.

Tariffs or taxes are not mentioned in the laundry list of powers granted to the President under the IEEPA. Nevertheless, the Government argues that the phrase "investigate, *** *regulate*, direct and compel, nullify, void, prevent or prohibit, any acquisition, holding, withholding, use, transfer, withdrawal, transportation, *importation* or exportation of, or dealing in *** any property in which any foreign country or national thereof has any interest" in 50 U.S.C. § 1702(a)(1)(B) should be parsed to give the President the authority to "regulate" "importation" by imposing tariffs.[3] (Emphasis added). Following the logic proffered by the Government, the statute would also grant the President the authority to "regulate" any "uses," "transfers," "transportation" or "dealing in" imported property, effectively imbuing the President with the power to impose excise or other taxes on a host of transactions involving imported property (e.g., sales taxes, use taxes, value added taxes, and transportation taxes).[4]

---

3. Tariffs have been considered taxes since the nation's founding up until today. The Federalist Nos. 12, 32 (Alexander Hamilton) (identifying import duties (tariffs) as taxation available to and properly administrated by the federal government); Douglas A. Irwin, *Clashing Over Commerce: A History of US Trade Policy* 5 (2017) ("Import tariffs are taxes levied on foreign goods as they enter the United States."); Mary Amiti et al., *The Impact of the 2018 Tariffs on Prices and Welfare*, 33 J. Econ. Persps. 187, 188–189, 191 n. 2 (2019) (defining President Trump's 2018 tariffs as import taxes that cost importing businesses additional tax costs).

4. As discussed in Section C below, more than 200 years ago, the Court made clear that the authority to impose tariffs arises from the taxing power conferred by Article I, Section 8, clause 1 of the Constitution. *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1 (1824). Accordingly, from the perspective of Constitutional analysis, labelling a revenue raising measure as a "tariff," rather than a "tax," is without import.

The statute does not grant such broad and unfettered authority to the President.

With respect to federal taxes, Congress has in many instances delegated substantial authority to Treasury to identify problems in the application of the Internal Revenue Code and react appropriately. However, these delegations have never been read to authorize Treasury to impose taxes that differ in kind or amount from those imposed by Congress. The President's wholesale revamping of the tariff system without the participation of Congress is not authorized by the statute.

We recognize that the non-governmental parties have argued for application of the non-delegation doctrine or the major questions doctrine to set aside the Reciprocal Tariffs. As this case can be resolved as a matter of statutory interpretation, we urge the Court to expressly avoid addressing any non-delegation or major questions doctrine issues. Many of the delegations under the Internal Revenue Code rely upon Treasury to identify unforeseen problems and complexities in the tax code and react appropriately. Unnecessarily addressing the non-delegation or major questions doctrines would introduce uncertainty and instability with respect to substantial portions of the federal tax law, undermining taxpayers' reliance on established and predictable rules that have long been recognized by the Court as a critical feature of our federal tax system.

ARGUMENT

A. The IEEPA Does Not Authorize the Imposition of Revenue-Raising Tariffs or Other Taxes by Executive Order.

After *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), the Court reviews the Executive's statutory interpretations *de novo*. The dispositive question is whether the IEEPA's text, structure, and history supply clear authority to impose revenue-raising tariffs. They do not.

At issue is the scope of the authority granted to the President by 50 U.S.C. § 1702(a)(1)(B), part of the International Emergency Economic Powers Act, 50 U.S.C. § 1701 *et seq.* ("IEEPA"). That subsection authorizes the President, to the extent specified in section 1701, to (1) "investigate, block during the pendency of an investigation, regulate, direct and compel, nullify, void, prevent or prohibit" (2) "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," (3) "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. § 1701(b), in turn, provides that "[t]he authorities granted to the President by section 1702 of this title may only be exercised to deal with an unusual and extraordinary threat *** and may not be exercised for any other purpose."

The Reciprocal Tariffs are not limited to specific items or industries (e.g., oil or steel). Rather, asserting that

the imbalance in the trade in goods posed a significant threat to the American economy, the President adopted a baseline tariff of 10% on all goods (including goods from those countries where the United States maintains a surplus in the balance of trade in goods). *See* Ex. Order No. 14,257, *Regulating Imports with a Reciprocal Tariff to Rectify Trade Practices that Contribute to Large and Persistent Annual United States Goods Trade Deficits,* 90 Fed. Reg. 15,041, 15,045 (Apr. 2, 2025). With respect to countries where there was a deficit in the balance of trade in goods,[5] the Executive Order listed higher tariffs based on the size of the imbalance as compared to the total amount of imported goods from that country. *Id.*; The White House, *Fact Sheet: President Donald J. Trump Declares National Emergency to Increase our Competitive Edge, Protect our Sovereignty, and Strengthen our National and Economic Security* (Apr. 2, 2025) ("President Trump will impose an individualized reciprocal higher tariff on the countries with which the United States has the largest trade deficits. All other countries will continue to be subject to the original 10% tariff baseline.").

The Government seizes upon two words in the IEEPA—"regulate" and "importation"—to support the Executive Order's imposition of the Reciprocal Tariffs.

---

5. Over the years, the United States' economy has transitioned from producing manufactured goods to providing high-value services. While the United States has a large balance of trade deficit in goods, this is significantly, but not entirely, offset by its balance of trade surplus with respect to services. *See U.S. International Trade in Goods and Services, July 2025,* Bureau of Econ. Analysis (Sept. 4, 2025), https://www.bea.gov/data/intl-trade-investment/international-trade-goods-and-services.

The Government argues that the combination of those two words grants the President authority to impose revenue-raising tariffs like the Reciprocal Tariffs. This ignores the remainder of the text.

The Government's interpretation violates ordinary canons of statutory interpretation. Section 1702(a)(1)(B) explicitly authorizes a list of specific types of action—"investigate, block during the pendency of an investigation, regulate, direct and compel, nullify, void, prevent or prohibit." Nowhere does it explicitly authorize imposing tariffs. Indeed, the words "tariffs" and "taxes" do not appear anywhere in the IEEPA.

The Government might equally pair the word "regulate" with any other noun in the second part of the subsection ("any acquisition, holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in"). For example, the Government might seize on the word "acquisition" instead of "importation," and argue that 50 U.S.C. § 1702(a)(1)(B) authorizes the imposition of taxes on the "acquisition" of any property held by foreign nationals subject to the jurisdiction of the United States—in other words, that it authorizes the imposition of sales or value added taxes. Or that it authorizes taxes on the "use" of any such property—i.e., use taxes. Or taxes on the "transportation" of such property—taxes on transportation, including transportation within the United States. Each of these taxes would almost certainly have the practical effect of limiting imports, just like tariffs. Nowhere does the Government disavow unilateral presidential authority to impose any such taxes, the authority of which is implied equally by its argument. Nor does the Government

suggest that the word-pair "regulate" and "importation" should be afforded a special meaning such that any taxes authorized by its reading of 50 U.S.C. § 1702(a)(1)(B) are limited to taxes imposed only upon "importation."

The United States' trade deficit has existed for half a century. *See U.S. Trade Balance*, Macrotrends, https://www.macrotrends.net/global-metrics/countries/usa/united-states/trade-balance-deficit (last visited Oct. 22, 2025). While the College takes no position on the factual basis of the declared emergency, the use of a statute designed for acute crises to address a chronic, half-century-old economic condition should be taken into account in determining the scope of the authority granted by Congress under the IEEPA. The Court should be reluctant to infer a broad, unstated power of taxation in an emergency statute when the declared "emergency" is a long-standing problem for which Congress possesses numerous non-emergency legislative tools. Moreover, the College notes that when Congress intends to authorize the imposition of revenue-raising taxes, it does so explicitly.[6]

6. Over the life of the Republic, Congress has responded to threats—ranging from the Civil War to World War II—by raising or imposing new taxes. *See, e.g.,* Revenue Act of 1861, ch. 45, §§ 49–51, 12 Stat. 292, 309–311, *repealed by* Revenue Act of 1862, ch. 119, § 89–93, 12 Stat. 432–473, *amended by* Revenue Act of 1864, ch. 173, § 116–123, 13 Stat. 223, 281–285 (repealed 1872) (creating the nation's first income tax to finance Civil War expenditures); Revenue Act of 1916, ch. 463, 39 Stat. 756 (enacting federal income, estate, munitions, and other taxes in response to World War I); Revenue Act of 1932, ch. 209, §§ 12–13, 401, 47 Stat. 169, 174–177, 243–44 (raising income, corporate, and estate tax rates in response to the Great Depression); Revenue Act of 1942, ch. 619, §§ 103, 172, 56 Stat. 798, 802–803, 884–894 (raising income tax rates and establishing short-lived Victory Tax

It is important to bear in mind the Constitutional principles that are at stake in this case. If the Court upholds the Reciprocal Tariffs: (1) the IEEPA will have been construed to effect a semi-permanent transfer of power from Congress to the President over tariffs and other revenue-raising measures authorized thereunder;[7] (2) the IEEPA will have been construed in a manner that significantly alters the allocation of fiscal authority set forth in Article I, Section 8, clause 1; and (3) it would be difficult to imagine any principled basis on which to deny any President the authority to decide tariff issues (and perhaps other tax issues) without consulting Congress. Article I, Section 8, clause 1 will, in effect, have been partially eviscerated, and a portion of the powers granted to Congress by that clause transferred to the President.

B. Whether Imposition of the Reciprocal Tariffs Might Be Authorized by Other Statutes is Not Before the Court.

In other statutes, Congress has at various times and for various reasons given emergency powers to the President to address trade issues. These powers include the right to impose temporary tariffs to address serious

---

in response to World War II); *see also* W. Elliot Brownlee, *Federal Taxation in America: A Short History* 31–37, 58–121 (2d ed. 2004) (discussing taxation responses to threats). We are not aware of any circumstance where the Executive branch has attempted to impose such taxes unilaterally, or where the Court has considered and sustained such an effort.

7. The transfer of authority would last until limiting legislation is passed by Congress and a President is willing to sign a bill depriving him of this power, or there are enough votes in Congress to override the President's veto of such a bill.

balance of payment issues (19 U.S.C. § 2132) and the right to adjust imports that threaten to impair national security (19 U.S.C. § 1862).

Thus, for example, in *Fed. Energy Admin. v. Algonquin SNG, Inc.*, 426 U.S. 548 (1976), the Court considered the language of 19 U.S.C. § 1862 (section 232 of the Trade Act of 1974) which authorized the President to "take such action *** to adjust the imports" of items that the Secretary of the Treasury determined threatened National Security. The Court held that a licensing fee scheme (exactions economically equivalent to tariffs), implemented by the President with respect to oil imports during the 1970s oil crisis was authorized under 19 U.S.C. § 1862. *See Algonquin*, 426 U.S. at 570–571. However, the *Algonquin* court was careful to note that its opinion was a limited one that "in no way compels the further conclusion that *any* action the President might take, as long as it has a remote impact on imports, is also so authorized." *Id.* at 571 (emphasis in original); *see also Am. Inst. for Int'l Steel v. United States*, 376 F. Supp. 3d 1335 (Ct. Int'l Trade 2019), *aff'd*, 806 F. Appx. 982 (Fed. Cir. 2020), *cert. denied*, 141 S.Ct. 133 (2020) (following *Algonquin*). Because *Algonquin* was decided before recent developments in the major questions doctrine, which raise a significant barrier to open-ended delegations of decisions of "vast economic and political significance,"[8] the Court should place significant weight on the *Algonquin* opinion's caution that its construction of a similar statute should not

8. *Ala. Ass'n of Realtors v. Dep't of Health & Hum. Servs.*, 594 U.S. 758, 764 (2021); *see also Biden v. Nebraska*, 600 U.S. 477 (2023); *West Virginia v. EPA*, 597 U.S. 697 (2022); *Nat'l Fed'n of Indep. Bus. v. OSHA*, 595 U.S. 109 (2022).

be read to give the President a free hand with respect to all actions that would have an impact on imports.

The Court's decision in *Algonquin* is further distinguishable by the starkly different legislative histories of the two statutes. The legislative record of the Trade Agreements Extension Act of 1955, Pub. L. No. 84-86, 69 Stat. 162 (predecessor to 19 U.S.C. § 1862), contains explicit floor statements from senators indicating they understood the authority to "adjust imports" to include the imposition of fees and duties. 101 Cong. Rec. 5292–5299 (1955); *see* H.R. Rep. No. 93-1644, at 29 (1974) (Conf. Rep.) (reaffirming the President "may *** take such action, and for such time, as he deems necessary, to adjust imports so as to prevent impairment of national security" under 19 U.S.C. § 1862); *see also Algonquin*, 426 U.S. at 561–571 (collecting legislative history).

In sharp contrast, the legislative history of IEEPA contains no such discussion of revenue-raising authority. To the contrary, as noted below, the Congressional Budget Office scored the bill as having *no budgetary impact* (S. Rep. No. 95-466, at 6 (1977)), definitive evidence that Congress understood IEEPA as a targeted regulatory tool, rather than a grant of taxing power.

In any event, neither the interpretation nor the constitutionality of any statutes outside the IEEPA are before the Court. The Questions Presented to this Court are limited to the IEEPA. Having chosen to rely on the IEEPA, the Government is bound by its choice. *See, e.g.*, *Moore* v. *United States*, 602 U.S. 572 (2024) (Barrett, J., concurring) (noting taxpayers had not raised question of constitutionality of subpart F of the tax

code) ("Subpart F and the [Mandatory Repatriation Tax imposed by 26 U.S.C. § 965 ("MRT")] may or may not be constitutional, nonarbitrary attributions of closely held foreign corporations' income to their shareholders. In this litigation, however, the Moores have conceded that subpart F is constitutional. *** And I agree with the Court that subpart F is not meaningfully different from the MRT in how it attributes corporate income to shareholders.").

C. *Gibbons* v. *Ogden* Does Not Stand for the Proposition That by Using the Phrase "Regulate … Importation" Congress Intended to Authorize the President to Impose Tariffs or Taxes Not Otherwise Authorized by Congress.

Prior to the adoption of the income tax, tariffs were one of the primary sources of funding for the federal government. *See* Irwin, *supra*, at 78. Tariffs only became a significantly smaller portion of gross federal revenues after modern income and payroll taxes were put in place in the late 1930s and early 1940s. *See* Brownlee, *supra*, at 58–121 (explaining the rise of the modern tax regime); Chad P. Bown & Douglas A. Irwin, *Even Now, Tariffs Are a Tiny Portion of US Government Revenue*, Peterson Inst. Int'l Econ. (July 16, 2019), https://www.piie.com/research/piie-charts/2019/even-now-tariffs-are-tiny-portion-us-government-revenue.

In *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1 (1824) (Marshall, C.J.), the Court considered whether the act of imposing duties on imports was properly considered part of Congress' powers under the taxing authority of Article I, Section 8, clause 1, or whether it was a creature of the power to regulate commerce under Article I, Section 8,

clause 3. The Court determined that these powers were "entirely distinct," classifying the power to impose duties on imports as falling under the taxing authority conferred to Congress by Section 8, clause 1. 22 U.S. at 201 ("We think it very clear, that it is considered as a branch of the taxing power. *** The power of imposing duties on imports is classed with the power to levy taxes, and that seems to be its natural place.").

While the government's Merits Brief cites *Gibbons* for the proposition that "the right to regulate commerce, even by the imposition of duties, was not controverted" by the Framers (Gov't Merits Br., at 24), the *Gibbons* Court understood that tariffs were first and foremost a method of generating revenue for the federal coffers. The *Gibbons* Court devoted substantial effort to distinguishing Congress's power to regulate Commerce (which pre-empts the field) from its taxing power (which does not pre-empt state taxation). *Id.* at 201–203.

In any event, the fact that Congress may indirectly regulate commerce by imposing duties does not mean that any delegation to the President of the power to regulate some aspect of commerce necessarily includes the power to impose duties or other revenue-raising measures by Executive Order. When Congress taxes commerce via tariffs, statutory delegations have been express and bounded[9]—underscoring that the taxing power is not silently subsumed within a grant "to regulate."

---

9. For example, the Reciprocal Trade Agreements Act of 1934, Pub. L. No. 73-316, 48 Stat. 943, authorized the President to negotiate bilateral, reciprocal trade agreements and to proclaim limited adjustments to tariff rates without congressional action.

D. The IEEPA Is Not a Revenue-Raising Statute.

Imposition of taxes without consent of the People's representatives was one of the impelling causes of the American Revolution. The Boston Tea Party was a protest against import duties (tariffs) imposed by the Tea Act of 1773, 13 Geo. 3, c. 44, and similar exactions. The clarion cry "no taxation without representation" originated as a protest against taxes imposed without the consent of the People through their representatives, a principle rooted in earlier English legal traditions such as the Magna Carta.[10]

The power to levy taxes and duties receives special treatment under the Constitution, pursuant to Article I, Section 7, clause 1, which provides "All [b]ills for [r]aising revenue shall originate in the House of Representatives ***." The purpose of the Origination Clause is to ensure that the most democratically representative Chamber is the one with primary authority over the scope and level of exactions made against the People by the federal government. *See United States v. Munoz-Flores*, 495 U.S. 385, 395 (1990) (explaining the Constitution placed origination power in the House because that "Chamber is more accountable to the people") (citing The Federalist No. 58 (James Madison)).

Origination Clause precedent helps to show why the IEEPA does not authorize the President to impose the tariffs at issue here. The Reciprocal Tariffs raise revenue for the Treasury's general fund and for unspecified

10. "No scutage or aid shall be imposed in [o]ur kingdom unless by common counsel thereof ***." Magna Carta, ch. 12 (1215), in A. Howard, *Magna Carta: Text and Commentary* 38 (1964).

purposes. Accordingly, they are only valid if authorized by a statute that is categorized as revenue raising under the Origination Clause. Statutes are not general revenue-raising statutes if they aim to accomplish a specific and tailored goal, such as the establishment of a national currency, *Twin City Bank v. Nebeker*, 167 U.S. 196, 202–203 (1897); the construction of a railroad, *Millard v. Roberts*, 202 U.S. 429, 435–437 (1906); or the establishment of a crime victims' fund, *Munoz-Flores*, 495 U.S. at 397–400.

The IEEPA, however, is designed to accomplish the specific and tailored goal of addressing an "unusual and extraordinary threat." Addressing a threat is not a general revenue-raising goal, and it does not authorize the President to impose general revenue-raising tariffs. *See* Susan C. Morse, Shu-Yi Oei & Diane M. Ring, *The Origination Clause and the President's Tariffs*, 103 Wash. U. L. Rev. (forthcoming 2026), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5632071#.

Furthermore, in enacting the IEEPA, Congress did not follow its normal processes for dealing with tax or tariff legislation, which is further evidence that the IEEPA should not be construed as a revenue statute. Congress' procedures for considering revenue bills in the late-1970s did not accord exactly with the modern reconciliation process established by the 1974 Congressional Budget Act, 2 U.S.C. § 601 *et seq.* *See* Stanley S. Surrey & Paul R. McDaniel, *The Tax Expenditure Concept: Current Developments and Emerging Issues*, 20 B.C. L. Rev. 225, 300–304 (1979) (describing nonconforming process for the Tax Reform Act of 1976). Nevertheless, the pre-reconciliation process still provided special treatment for

revenue bills. For example, it featured public hearings and private consultations involving the House Ways and Means Committee, the Senate Finance Committee, the Joint Committee on Taxation, and the Secretary of the Treasury. *See* Michael J. Graetz, *Reflections on the Tax Legislative Process: Prelude to Reform*, 58 Va. L. Rev. 1389, 1395–1397 (1972).

Similarly, the Congressional Budget Act, 2 U.S.C. § 601 *et seq.*, provides special treatment for bills containing revenue provisions, *inter alia,* requiring revenue estimates prepared in consultation with the Congressional Budget Office. In addition, Congress treats tariff matters as "revenue legislation," subject to special procedures. Megan S. Lynch, Cong. Rsch. Serv., R41408, *Rules and Practices Governing Consideration of Revenue Legislation in the House and Senate* (2015) (summarizing the most significant procedural rules applicable to the process of developing and considering revenue legislation).[11] Congress did not follow these rules in reviewing and enacting the IEEPA.

The IEEPA was not considered by House Ways and Means, Senate Finance, or the Joint Committee on Taxation, but rather by the House Committee on International Relations[12] and the Senate Committee on

11. Examples of such rules include: House Rule X, which grants the House Ways and Means Committee jurisdiction over revenue measures, including "customs revenue" (House Rule X, cl. 1(t) and House Rule XXI, cl. 5(a)(1)); and Senate Rule XXV, which gives the Senate Finance Committee jurisdiction over revenue measures, including "tariffs and import quotas" (Senate Rule XXV, cl. 1(i)).

12. H.R. Rep. No. 95-459 (1977).

Banking, Housing and Urban Affairs.[13] This is unsurprising given that the bulk of the specific powers granted to the Executive under the IEEPA authorize the President to cancel or otherwise control financial transactions with foreign countries and nationals in times of war and national emergency. Significantly, the Congressional Budget Office estimated that *the bill would have no budgetary impact*. S. Rep. No. 95-466 (1977), at 6 (emphasis added). The fact that the statute was not reviewed by the tax-writing committees is a strong indication that Congress did not believe it was transferring plenary taxing authority[14] over imports to the President, exercisable via an essentially unreviewable declaration of emergency.[15]

---

13. S. Rep. No. 95-466 (1977).

14. When Congress enacted the IEEPA in the late 1970s, legislative vetoes were still understood to be constitutional. Accordingly, Congress included a provision in the IEEPA enabling Congress to terminate the Executive's authority upon concurrent resolution. *See* 50 U.S.C. § 1706(b). Subsequently, in the wake of the Court's decision in *INS v. Chadha*, 462 U.S. 1919 (1983), the Eleventh Circuit ultimately determined 50 U.S.C. § 1706(b) to be an unconstitutional (but severable) legislative veto. *United States v. Romero-Fernandez*, 983 F.2d 195, 196 (1993). However, Congress' inclusion of section 1706(b) makes clear the President's authority under the IEEPA was not meant to be plenary—Congress intended to always have continuing participation, and the Executive acknowledged as much when the IEEPA was signed into law.

15. *See* Gov't Merits Br., at 41–43, arguing that the President's determination that longstanding trade deficits amount to an "unusual and extraordinary threat" is not subject to judicial review. However, the baseline 10% tariffs (imposed even on goods from countries with whom the United States enjoys a trade surplus) imposed by the Executive Order are not consistent with responding to an unusual or extraordinary threat, but rather appear to reflect policy differences, i.e., the President's rejection

The President, despite a lack of explicit congressional authorization, has suggested that the Reciprocal Tariffs—purportedly imposed under the authority of the IEEPA—are intentionally revenue-producing and may even replace the income tax as the principal source of federal revenue. *See* David Goldman & Matt Egan, *Trump Says He'll Eliminate Income Taxes. There's a Problem with That*, CNN Business (Apr. 28, 2025, 1:19 PM) https://www.cnn.com/2025/04/28/business/taxes-trump-tariffs (reporting the President's statement that "the tariffs will be enough to cut all of the income tax"). One leading estimate puts the likely collections under the tariffs at issue here at $1.7 trillion over ten years. *See* Erica York & Alex Durante, *Trump Tariffs: Tracking the Economic Impact of the Trump Trade War*, Tax Found. (Oct. 3, 2025), https://taxfoundation.org/research/all/federal/trump-tariffs-trade-war/ (estimating the Reciprocal Tariffs' revenue contribution at $1.7 trillion over ten years).[16] In the fiscal year ended September 30, 2025, the federal government collected $195 billion in tariff revenue, more than double the approximately $75 billion collected in the preceding fiscal year. *See* Richard Rubin & Anthony DeBarros, *DOGE, Deficits and More Fiscal Takeaways – What Changed, and Didn't in the*

---

of the free trade philosophy previously pursued by Congress and prior Presidents over much of the last century.

16. While the estimated $1.7 trillion in tariff revenue over 10 years is not a small amount, it is a fraction of the more than $5 trillion collected annually by the IRS under the Internal Revenue Code. *Internal Revenue Service Data Book, 2024*, I.R.S., at 3 tbl.1 (2025), https://www.irs.gov/pub/irs-pdf/p55b.pdf. Given what is at stake, the College counsels against undermining the integrity of the current tax system through expansive readings of the President's authority to raise revenue through other channels.

U.S.'s Budget Picture for the Latest Year, Wall St. J., Oct. 10, 2025, at A2.

The actions taken here by the Executive are avowedly for the purpose of raising substantial general revenues. But the magnitude of collections cannot expand the text of the statute. The fact that the IEEPA was not considered by the tax-writing committees and was scored by the Congressional Budget Office as having no budgetary impact is definitive evidence that Congress did not intend it to be a revenue-raising statute.

E. Case Law Under the Internal Revenue Code Demonstrates That a Broad Grant of Regulatory Authority Does Not Grant Plenary Authority Over Taxes.

Given that the Taxing Powers Clause (U.S. Const. art. I, § 8, cl. 1) authorizes Congress to impose federal taxes under the Internal Revenue Code as well as tariffs, it is useful to consider the limits that courts have imposed on apparently broad delegations of regulatory authority granted under the Internal Revenue Code. Courts have never interpreted these delegations as giving the Executive carte blanche with respect to creating new tax structure out of whole cloth. Rather, courts have confined Executive discretion using the boundaries of the statutory scheme or purpose authorized by Congress.

For example, 26 U.S.C. § 1502 authorizes the Secretary of the Treasury to adopt regulations providing rules for the determination of the tax liability of an affiliated group of corporations filing a consolidated tax return. The consolidated return regulations have been characterized as one of the broadest delegations of authority found in the Internal Revenue Code. *See,*

e.g., Am. Standard, Inc. v. United States, 602 F.2d 256, 260–261 (Ct. Cl. 1979) (noting Congress delegated power to the Secretary to promulgate regulations that are "unlike ordinary Treasury Regulations," but rather "are legislative in character and have the force and effect of law."); James R. Hines, Jr. & Kyle D. Logue, *Delegating Tax*, 114 Mich. L. Rev. 235, 251–252 (2015).

Yet even this regulatory free hand has not been viewed as giving the Treasury the authority to impose new, substantive taxes on taxpayers without Congress' express authorization. Shortly after the promulgation of the first set of consolidated return regulations, Treasury tried to limit the ability of consolidated return taxpayers to take the benefit of loss carryforwards arising in pre-consolidation years. The Sixth Circuit ruled that even though the regulatory delegation was broad, it did not permit the agency to create rules that directly contravened otherwise applicable provisions of the Internal Revenue Code. *Comm'r v. General Machinery Corp.*, 95 F.2d 759, 761 (6th Cir. 1938).

Subsequent courts have cautioned that the power granted to Treasury to make special rules governing consolidated taxpayers must be construed in light of Congress' intent that the resulting tax liability "clearly reflect the income" of (and prevent tax avoidance by) the consolidated group. *See, e.g.*, *Am. Standard, Inc.*, 602 F.2d at 261. In other words:

> Income tax liability is not imposed by the Secretary's regulations, but by the Internal Revenue Code. Thus, the purpose of the delegation of power to the Secretary can be stated more broadly as the power to conform the applicable income tax law of the Code to

> the special, myriad problems resulting from the filing of consolidated income tax returns. Though there may be many reasonable methods to determine a group's tax liability and the Secretary's authority is absolute when it represents a choice between such methods, *the statute does not authorize the Secretary to choose a method that imposes a tax on income that would not otherwise be taxed.*

Id. at 262 (emphasis added) (holding that the special tax treatment provided to Western Hemisphere Trading Companies and public utilities could not be abrogated by regulation when such companies were members of affiliated groups who filed consolidated tax returns).

These consolidated return cases stand for the proposition that courts will not read even a broad grant of authority to the President or the Treasury as delegating the power to impose additional taxes not specified by Congress.

In *Rite Aid Corp., et al. v. United States*, 255 F.3d 1357 (Fed. Cir. 2001), the Federal Circuit hewed to the above-described precedent and held that Treasury had no authority to promulgate a consolidated return regulation (former Treas. Reg. § 1.1502-20 (1991), which imposed the so-called duplicate loss rules) that would effectively impose a tax not owed by non-consolidated corporations. *See* 255 F.3d at 1360.

Believing that *Rite-Aid* had too tightly cabined Treasury, Congress modified the statute to permit consolidated return regulations to *depart* from the ordinary principles of income tax. American Jobs Creation Act of 2004, Pub. L. No. 108-357, § 844(a), 118 Stat. 1600

(codified as amended in 26 U.S.C. § 1502). The revised statutory language provides that "the Secretary *may prescribe rules that are different from the provisions of chapter 1* [the substantive income tax] that would apply *if* such corporations filed separate returns." 26 U.S.C. § 1502 (emphasis added).

However, the Joint Committee Report makes clear that, even under the newly expanded delegation of authority, Congress understood that Treasury remained constrained to choose a path that results in no more than the correct liability under the existing tax law:

> [T]he Treasury Department is authorized to issue consolidated return regulations utilizing either a single taxpayer or separate taxpayer approach or a combination of the two approaches, as Treasury deems necessary in order that the tax liability of any affiliated group of corporations making a consolidated return, and of each corporation in the group, both during and after the period of affiliation, *may be determined and adjusted in such manner as clearly to reflect the income-tax liability and the various factors necessary for the determination of such liability, and in order to prevent avoidance of such liability.*

Joint Comm. on Taxation, *Description of the "Small Business and Farm Economic Recovery Act"*, JCX-88-02, at 90 (2002) (emphasis added). Even though Congress departed from the separate taxpayer theory adopted by the *Rite Aid* court, the Joint Committee Report demonstrated that Congress continued to insist on fidelity to the general income tax statutes passed by Congress in confirming that

the approach, whether separate, consolidated or mixed, should clearly reflect income under the Code.

Another area in which Treasury has been delegated substantial authority is the reallocation of items of income and deduction between commonly controlled entities pursuant to 26 U.S.C. § 482. In *3M Co. v. Comm'r*, No. 23-3772, 2025 WL 2790424 (8th Cir. Oct. 1, 2025), the court recently rejected an effort by Treasury to eliminate by regulation the requirement that income subject to potential reallocation to a member of a commonly controlled group must be income that such member could legally receive—a principle established by this Court in *Comm'r v. First Security Bank of Utah, N.A.*, 405 U.S. 394, 403 (1972). Relying upon a 1986 statutory amendment providing that, in the case of intangible property, "the income with respect to such transfer or license shall be commensurate with the income attributable to the intangible" (Tax Reform Act of 1986, Pub. L. No. 99-514, § 1231(e)(1), 100 Stat. 2085, 2562–2563 (codified as amended at 26 U.S.C. § 482)), Treasury adopted a regulation allowing it to disregard foreign legal restrictions in determining whether and how much intangible income to reallocate. *See* Treas. Reg. § 1.482-1(h)(2). While the IRS argued that 26 U.S.C. § 482 "delegated discretionary authority" to the agency to make the proposed reallocation (*3M Co.*, 2025 WL 2790424, at *6), the Eighth Circuit in *3M Company* held that, as this Court recognized in *First Security Bank*, the statute itself imposed a "dominion and control" test, which could not be overridden by regulation. *3M Co.*, 2025 WL 2790424, at *4–6. Despite a grant of substantial discretion to the agency, the *3M Company* court refused to allow the IRS to impose a tax where no income was (or could be) received by a U.S. taxpayer.

If the Court were to adopt a broad reading of the delegation of the authority in the IEEPA to "regulate" "importation" which permitted the Executive to implement a novel tariff structure in the name of regulating imports, there is no principled reason why the Treasury could not make substantial adjustments to the income taxation of consolidated taxpayers (most of this country's largest businesses) by "prescrib[ing] rules that are different from the provisions of chapter 1." For example, Treasury could determine that the income taxation of consolidated taxpayers should be based on financial statement income, rather than on income computed under chapter 1 of the Code. Despite statements in the 2002 Joint Committee Report that the regulations should clearly reflect income, under the literal language of 26 U.S.C. § 1502, there is a substantial argument that this approach would be permissible. However, we submit that neither the IEEPA nor 26 U.S.C. § 1502 should be read as Congress ceding such plenary taxing authority to the Executive Branch.

The rules for reallocating income between commonly controlled entities pursuant to 26 U.S.C. § 482 could similarly be implicated by a broad ruling giving the President the authority to tax imports pursuant to the IEEPA. As much of the case law and regulations under 26 U.S.C. § 482 address transfer pricing between U.S. companies and related foreign entities, under the authority of the IEEPA, the President could presumably implement an all-new transfer pricing system going far beyond the scope of section 482, without further congressional authorization.

As the Court remarked more than a century ago, in interpreting "statutes levying taxes it is the established rule to not extend their provisions *** beyond the clear import of the language used." *Gould v. Gould*, 245 U.S.

151, 153 (1917). Because the IEEPA does not mention tariffs or taxes, the Court should be reluctant to imply the delegation of wholesale taxing authority to the Executive.

F. If a Decision is Rendered Under Either the Non-Delegation Doctrine or the Major Questions Doctrine, There Could be Far-Reaching and Unforeseeable Impacts on the Federal Tax System.

Treasury is generally authorized to "prescribe all needful rules and regulations for the enforcement of this title [26]." 26 U.S.C. § 7805(a). In addition, hundreds of Internal Revenue Code provisions contain more specific grants of regulatory authority. *See* John F. Coverdale, *Court Review of Tax Regulations and Revenue Rulings in the Chevron Era*, 64 Geo. Wash. L. Rev. 35, 52 (1995) (finding more than 1,000 such grants); Kristin E. Hickman, *Coloring Outside the Lines: Examining Treasury's (Lack of) Compliance with Administrative Procedure Act Rulemaking Requirements*, 82 Notre Dame L. Rev. 1727, 1735 nn.37–38 (2007) (citing one search that located 293 such grants and another that found over 550).

Through these statutes, Congress delegates to the tax specialists at Treasury the responsibility to identify potential interpretative problems, implement regulatory fixes, and issue other clarifying guidance. The system has worked well, and—especially in the wake of the Court's decision in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024)—the College believes that taxpayers have adequate tools to challenge agency overreach and agency errors in statutory interpretation.

In most cases, Congress' delegations of authority to Treasury and the IRS result in greater predictability and more flexibility in the application of the tax laws.

For example, in 26 U.S.C. § 7508A, Congress provides Treasury the authority to postpone the statutory deadlines for performing certain acts under the Internal Revenue Code for a period of up to 12 months in response to a federally declared disaster. When the COVID-19 pandemic struck, the IRS immediately extended a variety of tax deadlines for taxpayers.[17] Similarly, Treasury rules or IRS guidance show taxpayers how to claim preferential long-term capital gain rates, structure tax-preferred business transactions, determine who can claim a child as a dependent, and avoid income inclusion when they receive certain benefits at work.

Reliance upon established and predictable rules is a critical feature of our tax system. The Court has recognized "the reality that tax administration requires predictability." *Okla. Tax Comm'n v. Chickasaw Nation*, 515 U.S. 450, 459–460 (1995). It has also noted that, in tax law, "certainty is desirable." *United States v. Generes*, 405 U.S. 93, 105 (1972). When courts too readily undertake the task of re-examining general tax law principles, "taxpayers may not rely with assurance on what appear to be established rules lest they be subsequently overturned." *United States v. Byrum*, 408 U.S. 125, 135 (1972); *see also Chapman v. Comm'r*, 618 F.2d 856, 874 (1st Cir. 1980) (noting that "tax planning must proceed on the basis of settled rules").

If the Court were to resolve this case by applying either the non-delegation doctrine or the major questions doctrine based on the lack of standards for invoking tariff authority under the IEEPA, it will raise questions about

17. *See* I.R.S. Notice 2020-23, 2020-18 I.R.B. 742; I.R.S. Notice 2021-21, 2021-15 I.R.B. 986; and I.R.S. Notice 2023-21, 2023-11 I.R.B. 563.

the Executive's ability to make rules that provide certainty and predictability to taxpayers. This could have far-reaching and unforeseeable consequences for the federal tax system. If relying on an agency to identify problems and then employ its expertise to resolve them without explicit guidance from Congress is impermissible, then substantial portions of the tax regulatory regime might be subject to question.

This risk is not merely theoretical. As detailed in Section E above, the complex consolidated return regulations—a regime upon which nearly all major American businesses rely for tax planning and compliance—rest on a broad delegation of authority under 26 U.S.C. § 1502. The Federal Circuit's decision in *Rite Aid*, *supra*, demonstrates how courts have carefully policed the boundaries of that delegation to prevent the Executive from creating new substantive tax liabilities where none were intended by Congress. A broad ruling here under the major questions doctrine would invite a wave of challenges to this and other foundational Treasury regulations, injecting profound uncertainty into the fiscal infrastructure this Court has recognized requires stability and predictability.

If, on the other hand, the Court resolves this case by concluding that, under the IEEPA, Congress lawfully delegated to the President the power to determine by Executive Order whether to tax imports at all, and at what rate and upon what terms and conditions, it would be logically impossible to limit such a holding to tariffs. For example, such a holding might allow the President, by Executive Order, to impose a value-added, transportation, or other tax on imports.[18]

18. The President has previously asserted that value-added taxes (VATs) imposed by other countries may be a factor in the

The Court should therefore construe 50 U.S.C. § 1702(a)(1) narrowly. It should rest its decision on statutory interpretation and conclude that the Reciprocal Tariffs are not authorized by the IEEPA's language authorizing actions to "regulate" "importation."

In *Ashwander v. Tenn. Valley Auth.*, 297 U.S. 288 (1936), Justice Brandeis explained what has come to be known as the canon of constitutional avoidance:

> The Court will not pass upon a constitutional question *** if there is also present some other ground upon which the case may be disposed ***. [I]f a case can be decided on either of two grounds, one involving a constitutional question, the other a question of statutory construction or general law, the Court will decide only the latter.
>
> ***
>
> When the validity of an act of the Congress is drawn in question, and even if a serious doubt of constitutionality is raised, it is a cardinal principle that this Court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided.

Id. at 347–348. *Also see Jennings v. Rodriguez*, 583 U.S. 281, 298 (2018) (noting that canon permits a court "to

---

"non-reciprocal trade relationships with all United States trading partners" and are "unfair, discriminatory, or extraterritorial taxes imposed *** on United States businesses, workers, and consumers." The White House, *Reciprocal Trade and Tariffs*, at § 2(b) (Feb. 13, 2025).

choose between competing plausible interpretations of a statutory text" in order to avoid addressing Constitutional questions) (quoting *Clark v. Martinez*, 543 U.S. 371, 381 (2005)).

As the Court stated in *National Federation of Independent Business* v. *Sebelius*, 567 U.S. 519 (2012) (Roberts, C.J.):

> [I]t is well established that if a statute has two possible meanings, one of which violates the Constitution, courts should adopt the meaning that does not do so. Justice Story said that 180 years ago: "No court ought, unless the terms of an act rendered it unavoidable, to give a construction to it which should involve a violation, however unintentional, of the constitution." *Parsons v. Bedford*, 3 Pet. 433, 448–449 (1830). Justice Holmes made the same point a century later: "[T]he rule is settled that as between two possible interpretations of a statute, by one of which it would be unconstitutional and by the other valid, our plain duty is to adopt that which will save the Act." *Blodgett v. Holden*, 275 U.S. 142, 148 (1927) (concurring opinion).

The IEEPA, properly construed, does not authorize imposition of the Reciprocal Tariffs or any other taxes by presidential decree. Any uncertainty regarding its meaning should be resolved in a manner that minimizes its possible unconstitutionality. It is likewise unnecessary and inadvisable for the Court to reach a decision on either the non-delegation doctrine or major questions doctrine.

CONCLUSION

Chief Justice John Marshall famously quipped, "[a]n unlimited power to tax involves, necessarily, a power to destroy ***." *McCulloch v. Maryland*, 17 U.S. 316, 327 (1819). More recently, the Court has declared that the "power to tax is not the power to destroy while this court sits." *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 573 (2012) (quoting *Panhandle Oil Co. v. Mississippi ex rel. Knox*, 277 U.S. 218, 223 (1928) (Holmes, J., dissenting)). To avoid granting the Executive a "power to tax" found nowhere in the text of the statute, the Court should acknowledge that the IEEPA does not transfer a revenue-raising function from Congress to the Executive nor does it allow the President to reject the federal tax and tariff systems authorized by Congress. It should do both by rendering a decision against the Government in these cases on statutory interpretation grounds.

Respectfully submitted,

THEODORE P. SETO
PROFESSOR OF LAW
Burns 322
919 Albany Street
Los Angeles, CA 90015

JOHN M. COLVIN
Counsel of Record
JASON A. HARN
COLVIN + HALLETT, P.S.
719 Second Avenue,
Suite 711
Seattle, WA 98104
(206) 223-0800
jcolvin@colvinhallettlaw.com

Counsel for Amicus Curiae