

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,
IN HIS OFFICIAL CAPACITY, *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 AMICI CURIAE SCHOLARS OF THE
HISTORY OF CONSTITUTIONAL LAW AND THE
PRESIDENCY IN SUPPORT OF PETITIONERS IN
NO. 24-1287 AND RESPONDENTS IN NO. 25-250

PAUL R.Q. WOLFSON

Counsel of Record

POOJA A. BOISTURE

SOMIL B. TRIVEDI

AMY C. VICKERY

GILBERT G. ORBEA

DEMOCRACY FORWARD

FOUNDATION

P.O. Box 34553

Washington, DC 20043

(202) 448-9090

pwolfson@democracy

forward.org

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INTEREST OF AMICI CURIAE¹

Amici are prominent scholars of the history of constitutional law and the presidency. They submit this brief to synthesize the relevant history of congressional delegations to, and corresponding restrictions on, the Executive relating to tariff authority. In providing that analysis, this brief also details the major political and economic significance of Congress's careful delegation of tariff power, an issue that has been divisive throughout our nation's history. An examination of that history makes clear that the major questions doctrine applies to the issue of the Executive's invocation of tariff authority at issue here. A full list of amici is attached as an appendix to this brief.

SUMMARY OF ARGUMENT

Tariff authority has rested squarely with the legislative branch since the nation's founding, and the extent of Congress's delegation to the President of that authority is one of the nation's first and most enduring major questions of governance. From the first Tariff Act of 1789 onward, tariff setting has been understood as a legislative function, though one that Congress can, and periodically has, allowed the President to administer—but only within defined bounds. Those bounds have expanded or contracted over the course of American history, as Congress has sought to balance the need for executive agility with the constitutional imperative of legislative control over the taxing power. But what has not changed is the fundamental

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

importance of tariff questions to both the economy and, more broadly, American society.

The modern legislative framework reflects Congress's deliberate turn toward restraint of Executive authority. Jolted by President Nixon's levy of a global ten-percent tariff to address international monetary stresses caused by overvaluation of the dollar, Congress responded by enacting a series of reforms, namely the Trade Act of 1974, the National Emergencies Act of 1976 (NEA), and the International Emergency Economic Powers Act of 1977 (IEEPA). These reforms were intended to guard against the possibility of Presidents misusing tariff-related powers authorized for emergencies to remake domestic economic policy. To read these measures, as conferring unfettered tariff authority on the President is to turn them on their head. Just as *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952), marked the judiciary's recognition that emergencies do not erase constitutional boundaries, the Trade Act of 1974, NEA, and IEEPA represent Congress's own structural response to the same concern.

Given the constitutional grounding and direct involvement of Congress in shaping the scope of the President's authority and discretion over tariffs, the major questions doctrine applies to the President's claim of unilateral and limitless tariff authority under IEEPA. That doctrine applies when an executive entity has used its authority to decide an important question of policy that the Constitution and democratic principles indicate belongs to Congress. In such cases, this Court has insisted on a clear delegation by Congress of authority to decide the question. Here, we have the opposite—a recognition by Congress from the

early days of the Nation forward that tariffs are a matter of gripping domestic concern and that any authority delegated to the President must be constrained.

The President has far exceeded the confines of his tariff authority in IEEPA, and respect for Congress requires that the tariffs at issue be struck down.

ARGUMENT

I. SINCE THE FOUNDING, CONGRESS HAS PLAYED THE CENTRAL ROLE IN REGULATING TARIFFS

Tariff policy, and the balance of tariff authority between the legislative and executive branches, have been fundamental issues of policy and politics since our Nation's inception. The Boston Tea Party—one of the first major acts of rebellion against British rule—was a protest over tariffs on tea. *Report on the Boston Tea Party*, Boston Gazette, Dec. 20, 1773, *reprinted by* The Gilder Lehrman Inst. of Am. Hist., <https://perma.cc/8SMX-WH63>. The Tea Party manifested colonists' larger displeasure with taxation without representation. *See* Declaration and Resolves of the First Continental Congress, Resol. 4 (1774), *reprinted by* Lillian Goldman L. Libr., Yale Law Sch., <https://perma.cc/HB92-LJ5T> (denouncing “every idea of taxation internal or external, for raising a revenue on the subjects, in America, without their consent”). This explosive tariff protest set the colonies on a path to revolution and “the cause of Boston ... ever will be consider[e]d as the cause of America.” Letter from George Washington to George William Fairfax (June 10-15, 1774), *reprinted by* Nat'l Archives: Founders Online, <https://perma.cc/YQ2T-QBLA>.

The Framers knew that British mercantilist policies had played a fundamental role in colonial demands for independence. *See* The Declaration of Independence paras. 19, 2 (U.S. 1776) (enumerating Britain’s imposition of “Taxes on us without our Consent” as one of the offenses creating “an absolute Tyranny over these States”); *Parliamentary Taxation of Colonies, International Trade, and the American Revolution, 1763-1775*, Office of the Historian, Dep’t of State, <https://perma.cc/729R-6ME7> (last visited Oct. 22, 2025). Indeed, the Declaration of Independence drew on a long constitutional tradition, beginning with Parliament’s Petition of Right, that condemned the Crown’s imposition of taxes and duties without legislative consent. The Declaration of Independence para. 19; The Petition of Right (1627), 3 Car. 1, c.1, § VIII, *reprinted by* Inst. of Hist. Rsch., Univ. of London, <https://perma.cc/2T9B-DSE3> (“[T]hat no man hereafter be compelled to make or yeild any Guift Loane Benevolence Taxe or such like Charge without com[m]on consent by Acte of Parliament.”). But the Framers also knew that the Articles of Confederation had not established a sufficient method for funding the national government. *See, e.g.*, The Federalist No. 21 (Alexander Hamilton). This was in part because the Articles had not empowered the national government to impose taxes or to regulate foreign commerce. *See* Articles of Confederation of 1781, arts. VIII (providing taxes “shall be laid and levied by the authority and direction of the legislatures of the several states within the time agreed upon by the united states in congress assembled”), IX (providing “no treaty of commerce shall be made, whereby the legislative power of the respective states shall be restrained from imposing such imposts and duties on foreigners”). The Framers

determined to remedy this deficit in the Articles with the new Constitution. For example, Alexander Hamilton homed in on tariffs and excises as an expedient and equitable way to raise federal revenue in a manner that would avoid inequality among the States. The Federalist No. 21 (“There is no method of steering clear of” inequality among the States, “but by authorizing the national government to raise its own revenues” through “[i]mposts, excises, and, in general, all duties upon articles of consumption.”).

When these Framers drafted the Constitution, they unmistakably assigned to Congress the authority to “regulate Commerce with foreign Nations” and to “lay and collect Taxes, Duties, Imposts and Excises.” U.S. Const. art. I, § 8, cls.1, 3; *see also* The Federalist No. 33 (Alexander Hamilton) (“What is the power of laying and collecting taxes, but a LEGISLATIVE POWER, or a power of MAKING LAWS, to lay and collect taxes?”). The necessity for providing a national revenue was the first major consideration of the new Congress in 1789. Scott Bomboy, *A Brief History of the Constitution and Tariffs*, Nat’l Const. Ctr. (Feb. 7, 2025), <https://perma.cc/PD33-7PA9>; *Tariff Acts Passed by the Congress of the United States from 1789 to 1895*, S. Doc. No. 54-219, 1st Sess. (1896) (Prefatory Note). Because direct taxes under the new Constitution had to be apportioned among the states, U.S. Const. art. I, § 2, cl. 3, tariffs remained the obvious choice. James Madison introduced the subject of the tariff, specifically tying it to the collection of revenue:

[A] national revenue must be obtained; but the system must be such a one, that, while it secures the object of revenue, it shall not be oppressive to our constituents: Happy it is for us

that such a system is within our power; for I apprehend that both these objects may be obtained from an impost on articles imported into the United States.

James Madison, *Import and Tonnage Duties*, 1 Annals of Cong. 107 (1789) (Joseph Gales ed., 1834). The Tariff Act of 1789 was just the second act of Congress, Douglas A. Irwin, *Revenue or Reciprocity? Founding Feuds over Early U.S. Trade Policy* 17 (Nat'l Bureau of Econ. Rsch., Working Paper No. 15144, 2009), <https://perma.cc/45S4-4WGK>, and it was passed two months before Congress created the Treasury Department, see Andrew Reamer, *Before the U.S. Tariff Commission: Congressional Efforts to Obtain Statistics and Analysis for Tariff-Setting, 1789-1916*, in *A Centennial History of the United States International Trade Commission*, USITC Pub. 4744, at 42 (Nov. 2017), <https://perma.cc/4EK9-CN9Q>.

But despite the “broad consensus that import duties should be the principal source of revenue,” and that Congress had the authority to impose those duties, other aspects of tariff policy were immediately divisive. See generally Irwin, *Revenue or Reciprocity?*; see also Phillip W. Magness, *The Problem of the Tariff in American Economic History, 1787-1934*, CATO Inst. (Sept. 26, 2023), <https://perma.cc/B9N2-LDLN>. Specifically, there was ongoing policy disagreement among the Framers as to whether tariffs should be used to raise revenue only, or “as a tool for achieving reciprocal market access” as well. Irwin, *Revenue or Reciprocity?*, at 2. In the early years of the Republic, Madison (in the House) and Thomas Jefferson (as Secretary of State) advocated for a policy of discriminatory tariffs against Britain to force improvements in its treatment

of American goods, while Hamilton (as Secretary of the Treasury) focused on using tariffs for maximizing revenue. *Id.* at 24-26. The House floor was the arena for this policy debate. *Compare* 4 Annals of Cong. 209-225 (1794) (James Madison speech), *with id.* at 174-209 (Representative William Loughton Smith speech).² The contours of this debate demonstrate that tariff issues were fundamental to national governance—and potentially explosive—since the outset.

For the roughly 150 years that followed, Congress assiduously exercised its authority over foreign trade and revenues; indeed, Congress set every tariff imposed on imported products. *See Tariff Acts Passed by the Congress of the United States from 1789 to 1909*, H.R. Doc. No. 61-671 (1909) (compiling over 260 congressional acts, joint resolutions, and proclamations on tariffs); J.F. Hornbeck & William H. Cooper, Cong. Rsch. Serv., RL33743, *Trade Promotion Authority (TPA) and the Role of Congress in Trade Policy* 3 (2010), https://www.congress.gov/crs_external_products/RL/PDF/RL33743/RL33743.51.pdf. As the United States' manufacturing industrial base emerged, so too did a great and enduring congressional debate over protectionism as a trade policy. *See Irwin, Revenue or Reciprocity?*, at 17. Northern manufacturing regions contained import-competing industries, and thus benefitted from protectionist tariffs, while southern

² Demonstrating the legislative prerogative over tariffs, Hamilton had to deliver his policy perspective via congressional surrogate. *See, e.g., Irwin, Revenue or Reciprocity?*, at 33 n.41 (quoting Letter from Thomas Jefferson to James Madison (Apr. 3, 1794) (“I am at no loss to ascribe [Representative] Smith’s speech to it’s [sic] true father. Every title of it is Hamilton’s except the introduction.”)).

agricultural regions exported raw materials and imported manufactured goods, and thus benefitted from low tariffs. *See* Hornbeck & Cooper, *Trade Promotion Authority* 3; *see also* Douglas A. Irwin, *Trade Policy in American Economic History*, 12 Ann. Rev. Econ. 23, 41 (2020). Consequently, until the Smoot-Hawley Tariff Act in 1930, Congressional voting on trade measures pitted region-against-region (South vs. Northeast), sector-against-sector (industrialists vs. agriculturalists), and class-against-class (producers vs. consumers).³ Irwin, *Trade Policy in American Economic History*, 12 Ann. Rev. Econ. at 26-31; *see also* Douglas A. Irwin, *Antebellum Tariff Politics: Coalition Formation and Shifting Regional Interests* 3-4 (Nat'l Bureau of Econ. Rsch., Working Paper No. 12161, 2006), https://www.nber.org/system/files/working_papers/w12161/w12161.pdf (“At the risk of oversimplification, the United States during [the antebellum] period consisted of three regions—the North, the South, and the West. Each region had strikingly different preferences over tariff policy, which was one of the most controversial political issue[s] of the day, perhaps second only to slavery.”).

The political stakes of tariffs over this period were extremely high, even existential. During the “Nullification Crisis” of 1832, for example, South Carolina declared null and void the tariffs passed by Congress in 1828 and 1832, and even contemplated seceding from the Union over them. S.C. Ordinance of Nullification (Nov. 24, 1832), *reprinted by Proceedings of the*

³ As explained, *infra*, the Smoot-Hawley Tariff Act of 1930 was the last time Congress revised the entire tariff schedule. Irwin, *Trade Policy in American Economic History*, 12 Ann. Rev. Econ. 41.

Convention of South Carolina Upon the Subject of Nullification 26-28 (1832) (declaring these tariffs to be “unauthorized by the Constitution of the United States” and “the people of this state will ... forthwith proceed to organize a separate government”). These types of disputes in Congress, where “one side or the other” was always “complaining that the country would be ruined if tariffs were not raised higher or lowered further,” endured. Irwin, *Trade Policy in American Economic History*, 12 Ann. Rev. Econ. at 31. But, throughout, Congress set the tariffs, and its members were politically accountable for them—indeed, following the Tariff Act of 1890 (commonly referred to as the McKinley Tariff Act), William McKinley himself lost congressional reelection, and his Republican party suffered significant losses in the House, in large part due to tariff backlash. Joseph J. Thorndike, *Tax History: Trump Ignores Inconvenient Facts About ‘Tariff Sheriff’ McKinley*, TaxNotes (Feb. 3, 2025), <https://perma.cc/RG4C-UGPH>; History, Art & Archives, U.S. House of Representatives, *The McKinley Tariff of 1890*, <https://perma.cc/9HBC-PUFW> (last visited Oct. 23, 2025).

As this history demonstrates, tariffs were a significant issue of contention and tension in our nation, one over which Congress exclusively maintained control.

II. CONGRESS DID NOT SURRENDER ITS TRADE AUTHORITY WITH THE EMERGENCE OF CIRCUMSCRIBED DELEGATIONS TO THE EXECUTIVE IN THE TWENTIETH CENTURY

The twentieth century saw an expansion in congressional delegations of tariff authority to the President. The growth of the U.S. economy and

international trade increased the complexity of Congress’s tariff-setting task. And worldwide warfare and the effects of the Great Depression spurred Congress towards a model of economic regulation that embraced more agile executive decision-making. But even within this context, Congress maintained limits on the tariff powers it assigned to the President, and retained broad tariff authority for itself.

Following the enactment of the Sixteenth Amendment in 1913, Congress substantially shifted its revenue policies by reducing tariff rates and reestablishing the Federal income tax, *see* Revenue Act of 1913, Pub. L. No. 71-361, 38 Stat. 114; as a result, revenue from customs duties declined from the majority of federal revenue to just one-to-two percent of it.⁴ *See* John M. Dobson, *Two Centuries of Tariffs: The Background and Emergence of the U.S. International Trade Commission*, USITC, Pub. T-PURL GPO171219, at 1 (Dec. 1976), <https://www.govinfo.gov/content/pkg/GOVPUB-T-PURL-gpo171219/pdf/GOVPUB-T-PURL-gpo171219.pdf>.

Yet, “the complexity of Congress’s tariff-setting task” only grew due to economic developments. *See* Reamer, *Before the U.S. Tariff Commission* 34. Thus, whereas the Tariff Act of 1789 was three pages long, the Smoot-Hawley Act of 1930, the last general tariff legislation passed by Congress, was nearly 200 pages and set tariff levels for nearly 3,300 items. *Id.* (discussing Tariff Act of 1930, Pub. L. No. 71-361, 46 Stat. 590). To keep up with the ever-increasing complexity

⁴ It has remained at that level for the past seventy years. *See* Christopher A. Casey, IF11030, Cong. Rsch. Serv., *U.S. Tariff Policy: Overview* (2025), <https://perma.cc/TPE4-Z7A8>.

of the U.S. economy and international trade, in 1916 Congress established the United States Tariff Commission (now known as the United States International Trade Commission). Revenue Act of 1916, Pub. L. No. 64-271, § 700, 39 Stat. 756, 795; *see also* Trade Act of 1974, Pub. L. No. 93-618, § 171(a), 88 Stat. 1978, 2009 (1975). The Commission maintains the United States tariff schedule, among other functions, but it does not usurp actual congressional power as “[t]he Commission may only act pursuant to powers granted to it by Congress.” *Mayborn Grp., Ltd. v. Int’l Trade Comm’n*, 965 F.3d 1350, 1355 (Fed. Cir. 2020).

After the United States’ entry into World War I, Congress passed the Trading with the Enemy Act of 1917 (TWEA), Pub. L. No. 65-91, 40 Stat. 411 (current version at 12 U.S.C. § 95 and 12 U.S.C. §§ 4301-4341), as a wartime measure. TWEA focused on “defin[ing], regulat[ing], and punish[ing] trading” with America’s wartime enemies. *Emergency Controls on International Economic Transactions: Hearing on H.R. 1560 and H.R. 2382 Before the H. Subcomm. on Int’l Econ. Pol’y & Trade of the H. Comm. on Int’l Rels.*, 95th Cong. 1 (1977) (statement by Rep. Jonathan B. Bingham). It limited trade, transactions, and communications with enemies or allies of enemies, regulated enemy-owned insurance companies, and provided a scheme for appropriating foreign-owned money and property. *See* TWEA, §§ 3(a), 3(c), 4(a), 6, 40 Stat. at 412-413, 415. Section 5(b) of the Act—an amendment passed with no discussion in the Congressional Record⁵—provided the President the power to

⁵ Edward S. Miller, *Bankrupting the Enemy* 6 (2007). Contemporary analyses of Section 5(b) saw it as having little importance. *Id.* at 7 (“In February 1918 an authoritative 485-page

“investigate, regulate, or prohibit, under such rules and regulations as he may prescribe ... any transactions in foreign exchange, ... whether enemy, ally of enemy, or otherwise ... by any person within the United States.” *Id.* § 5(b), 40 Stat. at 415. At the time of its passage, the legislation was widely understood as addressing concerns arising from World War I. *See* S. Comm. on Commerce, *Report on the Trading with the Enemy Act in National Bank of Commerce in New York, Trading with the Enemy Act*, 37 (1917), <https://perma.cc/ZA9E-S94X> (act would limit “our enemies and their allies from receiving any benefits” from the country’s business “until after the war closes”); 55 Cong. Rec. 4908 (1917) (statement of Rep. Andrew Jackson Montague) (“[T]he bill is intended to meet the emergencies growing out of the present world-wide conflict Other wars may grow out of this war: and therefore it is best to make one bite of a cherry.”); 55 Cong. Rec. 4869 (1917) (statement of Rep. William E. Cox) (“[A]s soon as the war is over[, t]he war powers given to the President by Congress will be repealed.”).

A decade and a half later, when newly inaugurated President Roosevelt was seeking authority to blunt the Great Depression, his administration reinterpreted Section 5(b) of TWEA as a broad delegation of legislative power to the executive outside the context of war. Benjamin A. Coates, *The Secret Life of Statutes: A Century of the Trading with the Enemy Act*, 1 *Mod. Am. Hist.* 151, 160 (2018). Although early legal opinions suggested that an executive invocation of Section 5(b) to support domestic economic regulations hung on

manual published ... as legal guidance to the TWEA merely reprinted 5(b) without comment except as a technical cross-reference to shipping.”).

“only a ‘shoe string,’” President Roosevelt relied on the provision as authority for his 1933 “banking holiday,” shutting down access to U.S. banks for a week to limit runs on bank reserves. *Id.* at 160-61 (quoting Raymond Moley, *The First New Deal* 147 (1966)). Recognizing that he required Congress’s approval, Roosevelt called a special session in Congress the day after his inauguration, declaring the banking holiday and putting forward legislation that many in Congress did not have a chance to read before hastily voting on it. Stephen Greene, *Emergency Banking Act of 1933*, Fed. Rsrv. Hist. (Nov. 22, 2013), <https://perma.cc/RSY6-PGW4>. Congress soon after enacted the Emergency Banking Act of 1933, which provided for the reopening of banks as soon as they were financially secure. *Id.* That bill simultaneously altered the scope of Section 5(b) of TWEA from applying only during wartime to applying also to periods of “national emergency declared by the President.” Emergency Banking Act of 1933, Pub. L. No. 73-1, § 2, 48 Stat. 1 (1933).

Roosevelt was also aware of the implications of trade policy on economic recovery from the Great Depression, and in 1934, he formally requested trade negotiating authority from Congress, making clear that the authority he sought was “within carefully guarded limits, to modify existing duties and import restrictions in such a way as will benefit American agriculture and industry.” Douglas A. Irwin, *Clashing Over Commerce: A History of U.S. Trade Policy* 424-25 (2017) (citation omitted). Congress delegated circumscribed economic power to the President through the Reciprocal Trade Agreements Act (RTAA), Pub. L. No. 73-316, 48 Stat. 943 (1934). The Act aimed to address the “present emergency” of the “economic depression,” and it authorized the President to enter into foreign

trade agreements increasing or decreasing existing duty rates by up to 50 percent. *Id.* § 350(a)(1)-(2), 48 Stat. at 943-44.

But in authorizing the President's request through the RTAA, Congress placed clear limits on the President, including by limiting the President's authority to increase rates by more than a certain percentage of established statutory rates. *See, e.g., id.* § 350(b), 48 Stat. at 944. In language added to appease critics, who objected that the RTAA surrendered Congress's taxing power to the President, Irwin, *Clashing Over Commerce* 426-28, the law provided that "[t]he authority of the President to enter into foreign trade agreements" would "terminate on the expiration of three years from the date of the enactment of this Act," after which Congress would have to renew the President's authority. 19 U.S.C. § 1352(c); Irwin, *Clashing Over Commerce* 426. This time limit "would keep the executive branch accountable to the legislature." Irwin, *Clashing Over Commerce* 426. Supporters of the measure stressed that the "President's power is limited" and viewed the RTAA as a necessary and temporary provision for addressing the country's economic collapse. 78 Cong. Rec. 5811 (1934) (statement of Rep. Henry Ellenbogen); *see also id.* at 5801 (statement of Rep. John W. McCormack) (referring to "these emergency powers which the circumstances existing compel us to delegate to [the President] temporarily"). Through the RTAA, Congress thus conscientiously retained control over the tariff authority. Harold Hongju Koh, *Congressional Controls on Presidential Trade Policymaking After I.N.S. v. Chadha*, 18 N.Y.U. J. Int'l L. & Pol. 1191, 1195 (1986). Congress renewed presidential trade-negotiating authority under the RTAA

“repeatedly but grudgingly.” Irwin, *Clashing Over Commerce* 509.

In 1962, President Kennedy sought to replace the RTAA with something new, wanting congressional authority to make across-the-board tariff reductions. Irwin, *Clashing Over Commerce* 522-24. The Trade Expansion Act of 1962 replaced the RTAA and gave the President the authority he wanted, *see id.*, but only up to 50 percent of existing rates, Alan Wm. Wolff, *Evolution of the Executive-Legislative Relationship in the Trade Act of 1974*, 19 SAIS Rev. of Int’l Affs. 16, 17 (1975), and only for an initial period of five years, *see* Hornbeck & Cooper, *Trade Promotion Authority* 3-4. Under Section 232 of the Act, the President also was given the authority to adjust imports to protect national security. Trade Expansion Act of 1962, Pub. L. No. 87-794, § 232, 76 Stat. 872, 877 (1962) (current version at 19 U.S.C. § 1862). But before the President could do so, he first had to make a finding of a threat to national security and present it to Congress in a written statement. 19 U.S.C. § 1862; *Fed. Energy Admin. v. Algonquin*, 426 U.S. 548, 559 (1976).

Thus, even in this period marked by expanded delegation, Congress never surrendered its authority over tariffs.

III. WHEN NIXON TESTED THE LIMITS OF THE EXECUTIVE’S TARIFF-RELATED AUTHORITY, CONGRESS RESPONDED WITH RESTRICTION

The next significant test of the limits of the President’s tariff authority came when President Nixon imposed tariffs in an attempt to compel other nations to revalue their currencies. Nixon was seeking to ameliorate a depreciating dollar and a growing trade deficit.

By the late 1960s, the nation faced growing trade difficulties as several countries emerged as global trade competitors of the United States. Joseph J. Thorndike, *Nixon and Trump: United by Tough Talk and Even Tougher Tariffs*, TaxNotes (Mar. 10, 2025), <https://www.taxnotes.com/lr/resolve/tax-history-project/nixon-and-trump-united-by-tough-talk-and-even-tougher-tariffs/7rkyf>. Slower productivity growth in the United States relative to its trade partners also affected the dollar, which had become overvalued and meant that imports were cheap, but exports were expensive. *Id.* This, in turn, made the nation's exports less competitive on the global stage, and the United States' trade deficit began to grow. Douglas Irwin, *The Nixon Shock and the Trading System*, The Int'l Econ., Summer 2021, at 33, <https://perma.cc/7A8N-SZ7G>. With the dollar serving as an anchor of an international monetary system per the Bretton Woods agreement, the United States could not just devalue its currency to make its products cheaper, and, in any event, other countries did not want to revalue their currency when they had a competitive edge in export industries.⁶ Irwin, *Clashing Over Commerce* 542. This overvaluation of the dollar, combined with data that indicated that the United States was on track to have its first annual trade deficit since World War II and that a "foreign exchange crisis was inevitable," prompted

⁶ The Bretton Woods system formalized the dollar as the key global reserve currency in 1944; foreign currencies were fixed to the dollar, and the dollar fixed to gold. Sandra Kollen Ghizoni, *Nixon Ends Convertibility of U.S. Dollars to Gold and Announces Wage/Price Controls*, Fed. Rsrv. Hist. (Nov. 22, 2013), <https://perma.cc/4XHE-PA7M>.

Nixon to “prepar[e] for changes in the international monetary system.” *Id.* at 543-44.

To address these issues, Nixon was bent on using tariffs to pressure other countries, particularly Japan and Germany, to revalue their currencies via tariffs. *Id.* at 545. In August 1971, Nixon unveiled a “New Economic Policy,” which implemented wage and price controls and suspended the ability of other countries to exchange their dollars for gold at any time. Executive Order No. 11,615, 36 Fed. Reg. 15722 (Aug. 17, 1971); Richard Nixon, *Address to the Nation Outlining a New Economic Policy: “The Challenge of Peace,” reprinted by The Am. Presidency Project* (Aug. 15, 1971), <https://perma.cc/U9NP-LK82>. A third component of the policy also required the imposition of a “temporary” global ten-percent tax on all goods imported into the country. Proclamation No. 4074, 36 Fed. Reg. 15724 (Aug. 15, 1971). According to Nixon, these steps would rectify the erosion of the country’s trade balance. Nixon, *Address to the Nation*.

In order to suspend tariff agreements and impose these additional ten-percent tariffs, Nixon declared a national emergency. The tariff authorities he invoked, however, were the explicit congressional authorizations in the Tariff Act of 1930 (Smoot-Hawley), and the Trade Expansion Act of 1962, both of which gave the President authority to adjust tariff rates under specified conditions; Nixon did not invoke the TWEA. Proclamation No. 4074, 36 Fed. Reg. 15724 (Aug. 15, 1971). Department of Justice attorneys argued that the tariffs were also authorized under TWEA only after an importer sued the government to challenge the tariffs. *Yoshida Int’l, Inc. v. United States*, 378 F. Supp. 1155,

1157 (Cust. Ct. 1974), *rev'd*, *United States v. Yoshida Int'l, Inc.* ("Yoshida II"), 526 F.2d 560 (C.C.P.A. 1975).

Even as later-rationalized emergency tariffs, Nixon's tariffs respected congressional bounds—the tariffs did not exceed amounts set in congressionally approved existing tariff schedules. Proclamation No. 4074, 36 Fed. Reg. 15724 (Aug. 15, 1971); *see also* Douglas A. Irwin, *The Nixon Shock After Forty Years: The Import Surcharge Revisited*, 25-26 (Nat'l Bureau of Econ. Rsch., Working Paper No. 17749, 2012), <https://perma.cc/5QZW-R3SG>. And, Nixon's ten-percent surcharge was indeed temporary; it lasted less than five months, culminating in an agreement among the affected nations in December 1971 which established new exchange rates. Proclamation No. 4098, 36 Fed. Reg. 24,201 (Dec. 20, 1971).

Nixon also knew that he could not negotiate agreements with foreign governments without first obtaining renewed trade-negotiating authority, which had lapsed in 1967. In 1973, Nixon asked Congress for the power to reduce tariffs gradually, as a way to bargain against non-tariff barriers that affected the United States' ability to export to Europe and elsewhere. Irwin, *Clashing Over Commerce* 549; Richard Nixon, *Special Message to the Congress Proposing Trade Reform Legislation*, reprinted by The Am. Presidency Project (Apr. 10, 1973), <https://www.presidency.ucsb.edu/documents/special-message-the-congress-proposing-trade-reform-legislation>. Congress's first major trade legislation after Nixon's tariffs thus was made in response to his request for renewal of his authority to negotiate trade agreements. *See* S. Rep. No. 93-1298, at 7196 (1974); Irwin, *Clashing Over Commerce* 549-51.

In enacting the Trade Act of 1974, Congress sought to provide the President with negotiating credibility, while simultaneously “rein[ing] in a runaway President by crafting statutory procedures that would impose greater congressional control on executive discretion and ensure unprecedented congressional participation in the upcoming multilateral negotiations.” Koh, 18 N.Y.U. J. Int’l L. & Pol. at 1201. Under the Act, for example, Congress authorized the President to impose quotas and/or a temporary import surcharge, but only for up to 150 days, only up to 15 percent, and only “to deal with large and serious United States balance-of-payments deficits,” “to prevent an imminent and significant depreciation of the dollar in foreign exchange markets,” or “to cooperate with other countries in correcting an international balance-of-payments disequilibrium.” 19 U.S.C. § 2132(a).⁷ Section 201 gave the President authority to impose tariffs to protect a domestic industry, but only after the United States International Trade Commission makes a finding of “serious injury” by increased imports. *Id.* § 2251. A separate section, Section 301, *id.* § 2411(a), (c)(1)(B), authorized the President to direct the U.S. Trade Representative to respond to unfair practices, including by imposing tariffs and quotas against the foreign country’s imports, but only upon a finding that the other country has denied the United States its rights under

⁷ Only after Congress passed the Trade Act of 1974 did the appellate court in *Yoshida II* reverse the trial court’s holding that TWEA did not authorize presidential tariff increases. By that time, Congress had granted Nixon the tariff authority he sought, albeit via a specifically tailored statute. Indeed, the court in *Yoshida II* questioned the continuing relevance of its holding in the wake of Section 122 of the Trade Act of 1974. 526 F.2d at 582 n.33.

a trade agreement or has engaged in unfair trade practices.

With regard to the President’s authority to negotiate trade agreements, including non-tariff barriers such as customs and safety standards, the Trade Act required congressional sign-off, albeit via a “fast track” procedure. Wolff, *Evolution of the Executive-Legislative Relationship in the Trade Act of 1974*, 19 SAIS Rev. of Int’l Affs. at 20-21. Under this scheme, still in effect, the President can reach trade agreements with other countries, but Congress has to vote either up or down on the agreements; “the executive branch does not have independent power to enter into a trade-related agreement without that authorization.” Kathleen Claussen & Timothy Meyer, *The Foreign Commerce Power*, Duke L. Sch. Pub. L. & Legal Theory Series No. 2025-44, at 49 (rev. Sept. 8, 2025), <https://perma.cc/RGN8-893L>; Irwin, *Clashing Over Commerce* 551.

It was this statute, the Trade Act of 1974, that Congress believed was the “largest delegation of trade negotiating authority to the Executive in history,” S. Rep. No. 93-1298, at 7196 (1974), and yet it still contained the aforementioned specific limitations, including limited durations, ceilings as to tariff amounts, and congressional approval. As the Executive Branch’s then-principal trade attorney Alan Wolff—who worked on the proposed legislation for the Trade Act of 1974—acknowledged, in the Act “Congress retained the power to override the President’s decisions in providing import relief ... [and] the manner in which he retaliated against unfair foreign trade practices.” Wolff, *Evolution of the Executive-Legislative Relationship in the Trade Act of 1974*, 19 SAIS Rev. of Int’l Affs.

at 22. This history of the Trade Act of 1974 crystalizes two recurring themes: (1) the President does not have unfettered unilateral authority to set tariffs; and (2) when Congress has granted the Executive tariff authority, it has carefully limited that authority.

One year later, Congress enacted an additional safeguard against executive overreach, the National Emergencies Act (NEA), which terminated all existing declarations of national emergency. NEA ended within two years “[a]ll powers and authorities possessed by the President ... as a result of the existence of any declaration of national emergency in effect on September 14, 1976,” 50 U.S.C. § 1601(a). It also placed new restrictions on the declaration and termination of future national emergencies. *Id.* §§ 1621-22. The Senate committee report recommending passage of the Act emphasized that wartime and emergency delegations had granted the President “extraordinary powers” and that Congress needed to “fulfill[] its own constitutional responsibilities.” S. Rep. No. 94-922, at 1 (1976). The congressional debates on NEA similarly affirmed the need to curtail such “broad, open-ended grants of power [to the President], with no provision for congressional review.” 95 Cong. Rec. 425 (1977) (statement of Rep. Jonathan B. Bingham).

The NEA, as originally enacted, also allowed Congress to terminate emergency declarations using a “legislative veto,” which would have allowed two Houses of Congress to override presidential emergency declarations. 50 U.S.C. § 1622. Although the Supreme Court later held that legislative vetoes were unconstitutional in *INS v. Chadha*, 462 U.S. 919 (1983), Congress’s intent for NEA nevertheless was to reassert a tight grip over the matter of tariffs. Congress

also specifically identified in NEA the need to reexamine TWEA and propose such revisions as might be necessary to limit the President's exercise of authority under it. S. Rep. No. 95-466, at 2 (1977); *see* S. Res. 242, 93d Cong. (1974). As one Senator stated, NEA restored Congress to "its status as an independent, co-equal arm of the government." 95 Cong. Rec. 7218 (1977) (statement of Sen. Frank Church, quoting his earlier published remarks).

Congress's solution to the issue of TWEA, which it concluded had been too permissive, was IEEPA, a 1977 law that ensured that the Executive could not use emergency authorities to remake domestic economic policy. *E.g.*, S. Rep. No. 95-466, at 2 (1977) (emphasizing that "the purpose of" IEEPA was "to revise and delimit the President's authority" in response to earlier executive uses of TWEA). Under IEEPA, the President's non-wartime emergency powers are limited to "an unusual and extraordinary threat with respect to which a national emergency has been declared." 50 U.S.C § 1701(b). IEEPA's text thus reflects a conscious congressional decision to restrict—not expand—executive discretion. *Id.*; *see also* H.R. Rep. No. 95-459, at 2 (1977) (IEEPA's authorities were "both *more limited in scope* than those of [TWEA] and subject to various procedural limitations" (emphasis added)).⁸ Moreover, Congress's limiting language of

⁸ The House Committee emphasized that IEEPA was designed to impose "substantive restrictions" on presidential power, explaining that "emergencies are by their nature rare and brief, and are not to be equated with normal, ongoing problems." H.R. Rep. No. 95-459, at 10 (1977). The Committee further stated that a national emergency should be declared "only with respect to a specific set of circumstances which constitute a real emergency, and for no other purpose." *Id.*

“unusual and extraordinary” was not just a procedural formality, but a substantive standard embedded in the statute’s text. If there was once debate about how far the President’s authority extended under TWEA, IEEPA in both its text and in the accompanying legislative history makes clear that Congress sought to rein those powers in.

Instead of expanding the President’s trade-related powers, IEEPA was designed to “differentiate between those economic powers available to the President in time of war and those available in time of declared national emergency.” Jimmy Carter, *Presidential War Powers Bill Statement on Signing H.R. 7738 Into Law reprinted by* The Am. Presidency Project (Dec. 28, 1977), <https://perma.cc/Q6CY-HU9Z>. When IEEPA was enacted, not even President Carter, who signed IEEPA into law, thought that it would significantly affect trade policy. *See id.* (“The bill is largely procedural.”).

IV. THE HISTORY OF CONGRESS’S TARIFF AUTHORITY AND ITS RESTRICTIONS ON THE EXECUTIVE’S TARIFF-RELATED AUTHORIZATIONS DEMONSTRATE THAT THE TARIFFS AT ISSUE HERE PRESENT A MAJOR QUESTION

President Trump unilaterally has issued sweeping and boundless tariffs citing IEEPA as authority. Whether Congress in fact has delegated such unbri-dled authority to the President, in contravention of Congress’s and the Executive’s long and intricate history, is a major question. Such a delegation would be a sharp deviation from the Executive’s historical tariff-related authority.

It would be both ahistorical and contrary to the Framers’ conception of Congress’s tariff authority to read IEEPA as granting an unbounded tariff (*i.e.*, taxing) power to the Executive. The history of the statutes culminating in IEEPA, and the text of IEEPA itself, elucidate Congress’s deliberate decisions to reclaim its authority over tariffs. The Trade Act of 1974 was designed to reintroduce congressional restraint on a President’s use of tariff authority after Nixon unilaterally imposed tariffs to address an overvalued dollar and an increasing trade deficit, and his attorneys later invoked TWEA to justify the tariffs. *Supra* at 17-18. And, in response to Nixon’s declaration of a national emergency before imposing the tariffs, Congress later redefined the scope of the President’s power to declare national emergencies in the NEA. *Supra* at 21-22. Congress followed suit in IEEPA, constraining the President’s powers to “unusual and extraordinary threat[s]” arising “in whole or substantial part outside the United States.”⁹ 50 U.S.C § 1701(a)-(b).

IEEPA did not authorize limitless tariff rates via a statute that sought to constrain presidential authority. Reading the statute in the way that the President has advanced would render it “unrecognizable to the Congress that designed it.” *Util. Air Reg. Grp. v. EPA*, 573 U.S. 302, 324 (2014) (internal quotation marks

⁹ As one House Report noted, “[S]ection 5(b) [of TWEA] has become essentially an unlimited grant of authority for the President to exercise, at his discretion, broad powers in both the domestic and international economic arena ... [powers] exercised so long as there is an uninterminated declaration of national emergency on the books, whether or not the situation with respect to which the emergency was declared bears any relationship to the situation with respect to which the President is using his authorities.” H.R. Rep. No. 95-459, at 7 (1977).

omitted). If Congress had wanted to grant the President such unprecedented leeway over the tariff authority that Congress has possessed since our nation's inception, it would have had to say so in clear and unmistakable terms. *See West Virginia v. EPA*, 597 U.S. 697, 723 (2022) (“Extraordinary grants” of power “are rarely accomplished through modest words, vague terms, or subtle device[s].” (internal quotation marks omitted)); *Util. Air*, 573 U.S. at 324 (“We expect Congress to speak clearly if it wishes to assign to an agency decisions of vast economic and political significance.” (internal quotation marks omitted)).

Nor would any such delegation make sense given the realities of the legislative process. It is much harder for Congress to correct a decision from this Court that erroneously gives the President unbridled tariff authority—requiring two-thirds vote of each house to surmount a presidential veto of such a bill—than it is for Congress to correct a decision that comes out the other way—where a simple majority would authorize the tariff delegation. U.S. Const. art. I, §§ 5, 7. Aware of these procedural differences, Congress has maintained a tight grip over its delegations to the President.

That the major questions doctrine applies here is evident in multiple ways.¹⁰ First, the divisive history

¹⁰ The major questions doctrine constrains presidential as well as agency action. *See, e.g., Louisiana v. Biden*, 55 F.4th 1017, 1031 n.40 (5th Cir. 2022). That point has become even clearer in recent cases emphasizing the President's direct control over executive agencies. *See, e.g., Trump v. Wilcox*, 145 S. Ct. 1415 (2025) (permitting the President to remove agency members in violation of for cause protections, during pendency of litigation, because “the Constitution vests the executive power in the President”). If agency decisions are understood as expressions of presidential

of tariffs makes clear that Congress would not have intended to delegate tariff authority to the President without any limits. As detailed, *supra* at 6-9, American history is replete with moments featuring intense debates and congressional action over what the appropriate tariff policies were. During the Nullification Crisis, the issue of tariffs threatened to sever the country in two. *See supra* at 8-9. For that reason, when Congress has delegated tariff authority to the Executive, it has usually done so within numerical limits and other boundaries. *See, e.g., J.W. Hampton, Jr., & Co. v. United States*, 276 U.S. 394, 401 (1928) (statute limiting President to a “total increase or decrease of such rates of duty” of up to 50 percent of Congress’s specified rates (internal quotation marks omitted)); *Yoshida II*, 526 F.2d at 577 (Presidential Proclamation did not disregard congressional will because it specifically provided that its additional duty imposition could not exceed the prescribed rates of the Tariff Schedules of the United States). It is one thing for Congress to permit discretion in tariff rates within prescribed limits; it is another entirely—and a matter of vast political significance—for Congress to delegate unbounded rate-setting, without any legislative checks. The President’s claim to such limitless authority makes this precisely the type of unprecedented policy change to which the major questions doctrine applies. *See Biden v. Nebraska*, 600 U.S. 477, 496 (2023) (statutory authority given to the Executive Branch that was meant for “a few narrowly delineated situations specified by

authority, then limits that apply to agencies necessarily apply to the President himself. The unitary executive framework, properly understood, reinforces Congress’s power to define and confine executive discretion.

Congress” cannot be “convert[ed] ... into its opposite” (internal quotation marks omitted)).

Second, the issue of tariffs is rooted in separation of powers principles—specifically, the fact that the power to raise revenue belongs with Congress. *See supra* at 3-7 (discussing Congress’s power to raise revenue and issue tariffs); *see also West Virginia*, 597 U.S. at 723 (considering separation of powers principles in reading ambiguous statutory text). It is clear from the administration’s statements that it believes the tariffs under IEEPA will raise significant revenue for our nation and are desirable for that reason. *See, e.g.*, Grace Yarrow & Meredith Lee Hill, *Trump Says He’ll Use Tariff Revenue to Bail Out Farmers*, Politico (Sept. 25, 2025), <https://perma.cc/W3V7-ABB4> (“[W]e’re going to take some of that tariff money that we made ... and make sure that our farmers are in great shape, because we’re taking in a lot of money.”); The White House (@WhiteHouse), X (Aug. 31, 2025, 11:06 AM), <https://perma.cc/36FJ-5P27> (post touting “\$8 trillion in tariff revenue”). According to Congressional Budget Office estimates,¹¹ the tariffs have an economic impact valued between \$2.5 and 3.3 *trillion* over ten years, or approximately *five times more* than what this Court deemed the “staggering” impact of student loan forgiveness in *Nebraska* warranting invocation of the major questions doctrine. 600 U.S. at 502 (estimating that the loan forgiveness program cost taxpayers between \$469 billion and \$519 billion over ten years, which itself was ten times the economic impact the Court found significant in concluding that the CDC’s eviction

¹¹ Phill Swagel, *An Update About CBO’s Projections of the Budgetary Effects of Tariffs*, Cong. Budget Off. (Aug. 22, 2025), <https://perma.cc/7QLY-8HC9>.

moratorium triggered application of the major questions doctrine).

Indeed, the tariff rates that the President unilaterally imposed have been unknown to the American public since *Congress* passed the Smoot-Hawley Tariff Act in the 1930s. *See State of U.S. Tariffs*, The Budget Lab at Yale (Sept. 26, 2025), <https://perma.cc/7QLZ-GSBC>. Theoretically, they could be even (much) higher, for it appears the President sees no upper bound on his authority to raise tariffs. “[C]ommon sense” would suggest that if Congress, after its history of deliberate action regarding tariffs, wanted to return to *that* specific regime, given “[t]he basic and consequential tradeoffs involved in such a choice,” it would have made that decision itself. *West Virginia*, 597 U.S. at 722, 730 (internal quotation marks omitted).

The major questions doctrine is apt here for an additional reason: no prior administration, not even the prior Trump administration, has invoked IEEPA to issue tariffs to address a long-running trade deficit. The first Trump administration experienced trade deficits approximating half a trillion dollars but did not once, in four years, invoke IEEPA in response. *See* Macro-trends, *U.S. Trade Balance* (last visited Oct. 21, 2025), <https://perma.cc/X5M5-ZUAD>. It was surely familiar with its authorities under other tariff-granting legislation, such as Sections 201 and 301 of the Trade Act of 1974 as well as Section 232 of the Trade Expansion Act of 1962.¹² And it was intimately familiar with the

¹² *See, e.g.*, Proclamation No. 9705, 83 Fed. Reg. 11625 (Mar. 8, 2018); Proclamation No. 9704, 83 Fed. Reg. 11619 (Mar. 8, 2018); Notice of Action and Request for Public Comment Concerning Proposed Determination of Action Pursuant to Section 301: China’s Acts, Policies, and Practices Related to Technology

fact that the United States has long had trade deficits. *See, e.g.*, Exec. Order No. 13,786, 82 Fed. Reg. 16721 (Mar. 31, 2017); *see* Martin Crutsinger, *US Trade Deficit Surges in July to Highest in 12 Years*, Assoc. Press (Sept. 3, 2020), <https://perma.cc/D66S-VSA3>.

The Court should meet this administration’s application of “a long-extant statute ... to regulate a significant portion of the American economy” with a good measure of “skepticism.” *Util. Air*, 573 U.S. at 324 (internal quotation marks omitted); *see also Nebraska*, 600 U.S. at 501-02 (where a President seeks a “fundamental revision of [a] statute,” this Court should “hesitate before concluding that Congress meant to confer such authority” (internal quotation marks omitted)). This Court has required “something more than a merely plausible textual basis” when confronted with expansive assertions of Executive authority. *West Virginia*, 597 U.S. at 723. Reading IEEPA’s grant of authority to “regulate ... [the] importation” to authorize trillions of dollars in revenue generation through a double-digit tax hike—without any limitation—“is a wafer-thin reed on which to rest such sweeping power.” *See generally Ala. Ass’n of Realtors v. HHS*, 594 U.S. 758, 765 (2021) (per curiam) (rejecting argument that statutory provision historically used for measures like quarantining permitted the Centers for Disease Control and Prevention to impose a moratorium on evictions in response to the COVID-19 pandemic). Instead, both the text and history of IEEPA foreclose the possibility of clear congressional

Transfer, Intellectual Property, and Innovation, 83 Fed. Reg. 28710 (June 20, 2018); *President Trump Approves Relief for U.S. Washing Machine and Solar Cell Manufacturers*, Off. of the U.S. Trade Rep. (Jan. 22, 2018), <https://perma.cc/Q57T-9CLG>.

authorization; the point of IEEPA was to constrain and limit the President. Given “the full picture in view,” *Nebraska*, 600 U.S. at 517 (Barrett, J., concurring), it is clear that Congress did not authorize the President’s actions here.

CONCLUSION

The Court should hold that Congress did not grant the President the authority to impose the tariffs at issue in these cases.

Respectfully submitted.

PAUL R.Q. WOLFSON

Counsel of Record

POOJA A. BOISTURE

SOMIL B. TRIVEDI

AMY C. VICKERY

GILBERT G. ORBEA

DEMOCRACY FORWARD

FOUNDATION

P.O. Box 34553

Washington, DC 20043

(202) 448-9090

pwolfson@democracy

forward.org

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APPENDIX

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LIST OF AMICI

LIST OF AMICI CURIAE

Sotirios Barber is Emeritus Faculty at Notre Dame University.

Corey Brettschneider is Professor of Political Science at Brown University.

Holly Brewer is the Burke Chair of American Cultural and Intellectual History and Associate Professor at the University of Maryland.

Martin Flaherty is Charles and Marie Robertson Visiting Professor, School of Public and International Affairs at Princeton University, and Leitner Family Professor of International Human Rights Law at Fordham Law School.

Lawrence Lessig is the Roy L. Furman Professor of Law and Leadership at Harvard Law School.

Carol Nackenoff is the Richter Professor Emerita of Political Science at Swarthmore College.

Gautham Rao is Associate Professor at American University.

Lawrence Sager is the Alice Jane Drysdale Sheffield Regents Chair at the University of Texas at Austin School of Law.

Jeffrey K. Tulis is Professor Emeritus at the University of Texas at Austin.