

No. 24-1287

No. 25-250

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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.,

***Consolidated with***

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

*Petitioners,*

v.

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

*Respondents.*

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**MOTION OF SUSAN WEBBER,  
JONATHAN ST. GODDARD, AND  
RHONDA AND DAVID MOUNTAIN CHIEF  
TO INTERVENE, TO JOIN THE BRIEFING  
SCHEDULE, AND TO PARTICIPATE IN  
ORAL ARGUMENT**

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Monica J. Tranel  
TRANEL LAW FIRM, P.C.  
401 Washington Street  
Missoula, MT 59802  
(406) 926-2662  
*mtranel@tranelfirm.com*

*Counsel for Intervenors*

Susan Webber, Jonathan St. Goddard,  
Rhonda Mountain Chief and David Mountain Chief

## **Motion to Intervene and Brief in Support**

Susan Webber, Jonathan St. Goddard, and Rhonda and David Mountain Chief (Webber), respectfully file this motion for leave to intervene in this action.

This Court permits intervention when “the issues in the litigation are so related to the possible interests of [the intervenors] ... in the subject matter of th[e] suit, that the just, orderly, and effective determination of such issues requires that they be adjudicated in a proceeding in which all the interested parties are before the Court.” *United States v. Louisiana*, 354 U.S. 515, 515–16 (1957).

Webber’s interests are directly and substantially affected by the President’s use of the International Emergency Economic Powers Act (IEEPA) and Section 232 of the Trade Expansion Act of 1962 to impose tariffs on cross-border Tribes. The tariffs in question directly burden cross-border commerce of these tribal plaintiffs, who operate small businesses and family ranches near the U.S.-Canada border. While Webber’s legal arguments on the scope of IEEPA overlap with the existing parties, this case presents unique and crucial issues that are distinct from those already before the Court. These claims are not merely about the commercial legality of tariffs but are rooted in fundamental constitutional principles and a unique body of federal Indian law.

Specifically, Webber’s claims involve:

**The Indian Commerce Clause:** Article I, Section 8, Clause 3, the Indian Commerce Clause, grants Congress the exclusive power to regulate

commerce with Indian Tribes. *Cherokee Nation v. Georgia*, 5 Pet. 1 (1831); *Haaland v. Brackeen*, 599 U.S. 255, 143 S. Ct. 1609 (2023). This is a distinct power from regulating commerce with foreign nations or among the states. The President has no authority to impose tariffs on Indian Tribes, which includes the individuals that comprise the Tribes. *Haaland*, 599 U.S. 255, 274-75; *U.S. v. Holliday*, 70 U.S. 407, 418 (1865); *Gibbons v. Ogden*, 22 U.S. 1 (1824).

This core constitutional claim is a bedrock issue of separation of powers that is not being litigated by the current parties. The Supreme Court has affirmed this legislative power is “plenary and exclusive.” *Cotton Petroleum Corp. v. New Mexico*, 490 U.S. 163, 191-92 (1989).

**Tribal Sovereignty and Treaty Rights:** Webber’s claims also arise under Article VI, the Treaty Clause of the Constitution. The Jay Treaty of 1794, together with the Treaty of Greenville (1795), and the Explanatory Note of 1796 to Jay’s Treaty, recognize and protect into perpetuity the right of Native Americans to freely cross the border and engage in commerce without duties. Jay’s Treaty has never been abrogated. *Herrera v. Wyoming*, 139 S.Ct. 1686, 1698 (2019). The rights it recognizes are grounded in the Constitution, which explicitly adopted the Indian Commerce Clause as a direct response to the failures of the Articles of Confederation, which left Indian policy fragmented and vulnerable to state encroachment.

Executive action cannot extinguish these foundational rights set out in the plain text of the Constitution. *Arizona v. Navajo Nation*, 599 U.S. 555, 143 S. Ct. 1804 (2023). A decision on the merits without Webber’s participation could, as a practical

matter, “impair or impede” the ability to protect these sovereign and economic interests in subsequent litigation. The existing parties, focused on commercial law and administrative claims, cannot adequately represent these unique constitutional claims. *United States v. Sioux Nation of Indians*, 448 U.S. 371 (1980)(the federal government may not act in a national interest at the expense of Tribal interests).

Federal Rule of Civil Procedure 24 permits intervention as of right and by the Court’s leave. Webber satisfies both standards, and the Court should grant the motion.

### **I. Webber Satisfies the Requirements for Intervention As of Right.**

Federal Rule of Civil Procedure 24(a) provides: “On timely motion, the court must permit anyone to intervene who ... (2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant’s ability to protect its interest, unless existing parties adequately represent that interest.” Fed. R. Civ. P. 24(a)(2).

The Court’s power to permit intervention arises from both “the Federal Rules of Civil Procedure” and the “general equity powers” of the Court. *United States v. Louisiana*, 354 U.S. at 515; *Cameron v. EMW Women’s Surgical Ctr.*, 142 S.Ct. 1002 (2022). The grant of certiorari places this case on the merits docket as evidenced by the Court’s order setting a full briefing and oral argument schedule. This procedural posture makes intervention appropriate and timely. Webber meets the legal standard for intervention as of right under Fed. R. Civ. P. 24(a)(2).

*First*, Webber’s Motion is timely. This Motion to Intervene is filed within a day of the Court granting the Petition and setting the briefing schedule. The request for intervention is filed at the case’s earliest possible procedural juncture. See *Arizona v. California*, 460 U.S. 605, 615 (1983) (“the Indians’ participation in litigation critical to their welfare should not be discouraged”).

*Second*, the economic harm and legal uncertainty created by the tariffs constitute a direct, substantial, and legally protectable interest. A decision by this Court on the core question of IEEPA’s authority will be a precedent that will directly control the outcome of Webber’s case, thereby impairing the ability to protect the unique interests of a cross-border Tribe if these plaintiffs are not a party to this litigation. The existing parties, primarily focused on the commercial aspects of the tariffs, cannot adequately represent the sovereign, treaty-based, and Indian Commerce Clause interests that Webber presents. The “requirement of the Rule is satisfied if the applicant shows that representation of his interest ‘may be’ inadequate; and the burden of making that showing should be treated as minimal.” *Trbovich v. United Mine Workers of America* 8212 119, 404 U.S. 528, 538 n.10 (1972).

*Third*, the Ninth Circuit has scheduled oral argument for September 17, 2025. The government’s action in seeking a stay of the pending Ninth Circuit oral argument serves as a compelling and timely reason for this Court to grant intervention. The government’s motion argues the supremacy of this Court’s review and the need to centralize all related litigation. The most efficient way to achieve this goal and ensure a complete record on all issues is to allow Webber to intervene, rather than risk all claims being

prematurely halted in the lower court. Webber opposes the stay at the Ninth Circuit on the grounds that a complete record is necessary for a full understanding of the case, and is requesting the same opportunity to present constitutional and treaty arguments here.

## **II. Webber satisfies the Standards for Permissive Intervention.**

In the alternative, Webber satisfies the standards for permissive intervention under Federal Rule of Civil Procedure 24(b). That Rule provides that “[o]n timely motion, the court may permit anyone to intervene who ... has a claim or defense that shares with the main action a common question of law or fact.” Fed. R. Civ. P. 24(b). For the reasons stated above, this Motion is unquestionably timely. Given the great importance of the constitutional issues raised in this case, Webber should be granted permissive intervention as well.

## **CONCLUSION**

Webber requests this Court grant leave to intervene, align with the briefing schedule, and join in the oral argument. Alternatively, Webber asks the Supreme Court to issue any order it deems appropriate to manage the docket and the parallel proceedings, with the goal of hearing and resolving all the issues in one consolidated case.

September 9, 2025

Respectfully submitted,

MONICA TRANEL  
TRANEL LAW FIRM, P.C.  
401 Washington Street  
Missoula, MT 59802  
(406) 926-2662  
*mtranel@tranelfirm.com*

*Attorneys for Susan Webber, Jonathan St.  
Goddard, Rhonda Mountain Chief and David  
Mountain Chief*