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 *Amicus Curiae* of America's Future in Support of the Respondents in 24-1287 and the Petitioners in 25-250

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INTEREST OF THE *AMICUS CURIAE*[1]

Amicus America's Future is a nonprofit organization, exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code. America's Future participates in the public policy process, including conducting research, and informing and educating the public on the proper construction of state and federal constitutions, as well as statutes related to the rights of citizens, and questions related to human and civil rights secured by law.

STATEMENT OF THE CASE

This Court is called upon to address the authority of the President of the United States to impose tariffs on foreign nations under the International Emergency Economic Powers Act, 50 U.S.C. § 1701, *et seq*. ("IEEPA"), enacted on December 28, 1977.[2]

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[1] It is hereby certified that no counsel for a party authored this brief in whole or in part; and that no person other than this *amicus curiae*, their members, or their counsel made a monetary contribution to its preparation or submission.

[2] The Congressional Research Service describes IEEPA as follows: "[IEEPA] provides the President broad authority to regulate a variety of economic transactions following a declaration of national emergency. IEEPA, like the Trading with the Enemy Act (TWEA) from which it branched, sits at the center of the modern U.S. sanctions regime..... Over the course of the twentieth century, Congress delegated increasing amounts of emergency power to the President by statute.... No President has used IEEPA to place tariffs on imported products from a specific country or on products imported to the United States in general. However, IEEPA's similarity to TWEA, coupled with its relatively frequent use to ban imports and exports, suggests that such an

Presidential Directives

On January 20, 2025, President Trump issued Proclamation 10886, Declaring a National Emergency at the Southern Border of the United States, stating:

> America's sovereignty is under attack. Our southern border is overrun by cartels, criminal gangs, known terrorists, human traffickers, smugglers, unvetted military-age males from foreign adversaries, and illicit narcotics that harm Americans.... [*Id*.]

Thereafter, President Trump issued the five challenged Executive Orders:

- Executive Order 14193, "Imposing Duties to Address the Flow of Illicit Drugs Across Our Northern Border" (Feb. 1, 2025);
- Executive Order 14194, "Imposing Duties to Address the Situation at Our Southern Border" (Feb. 1, 2025);
- Executive Order 14195, "Imposing Duties To Address the Synthetic Opioid Supply Chain in the People's Republic of China" (Feb. 1, 2025);
- Executive Order 14257, "Regulating Imports With a Reciprocal Tariff To Rectify Trade Practices That Contribute to Large and Persistent Annual United States Goods Trade Deficits" (April 2, 2025); and

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action could happen." Congressional Research Service, "The International Emergency Economic Powers Act: Origins, Evolution, and Use," Summary at 26 (Jan. 30, 2024).

- Executive Order 14266, "Modifying Reciprocal Tariff Rates To Reflect Trading Partner Retaliation and Alignment" (April 9, 2025).

VOS I — Court for International Trade

V.O.S. Selections is a consolidation of two challenges to certain tariffs filed in the U.S. Court for International Trade ("CIT") — one by five small businesses led by plaintiff V.O.S. Selections, Inc., and one by 12 states led by plaintiff Oregon. The CIT granted summary judgment for Plaintiffs on May 28, 2025, labeling the first set of tariffs as the "Trafficking Tariffs" and the second as "Worldwide and Retaliatory Tariffs." *V.O.S. Selections, Inc. v. United States,* 772 F. Supp. 3d 1350, 1362-64 (Ct. Int'l Trade 2025) ("*VOS I*"). The CIT ruled that "[b]ecause of the Constitution's express allocation of the tariff power to Congress," IEEPA must not "delegate an unbounded tariff authority to the President." The court ruled that "[t]he Worldwide and Retaliatory Tariffs lack any identifiable limits and thus fall outside the scope" of IEEPA. Then, the court stated that the tariffs were not actually designed to "'deal with an unusual and extraordinary threat with respect to which a national emergency has been declared,'" since they deal with raising revenue and not stopping narcotics trafficking, they fall "outside the scope" of IEEPA. *Id.* at 1370.

***VOS II* — Federal Circuit Decision**

The Federal Circuit affirmed by giving a narrow reading of IEEPA, which states that, upon the declaration of a national emergency, the President has authority to:

> investigate, **block** during the pendency of an investigation, **regulate**, direct and compel, nullify, void, prevent or prohibit, any acquisition, holding, withholding, use, transfer, withdrawal, transportation, **importation** or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest by any person, or with respect to any property, subject to the jurisdiction of the United States. [50 U.S.C. § 1702(a)(1)(B) (emphasis added).]

The court held that, even though the President has statutory power to both "regulate" and completely "block" importation from a foreign country, "none of these actions explicitly include the power to impose tariffs...." *V.O.S. Selections, Inc. v. Trump*, 2025 U.S. App. LEXIS 22405 at *27 (Fed. Cir. 2025) ("*VOS II*").

As a fallback position, the court concluded that, even if "Congress ratified [*Yoshida*'s] conclusion that 'regulate ... importation' could include the power to impose tariffs — we still must conclude that the Challenged Executive Orders in this case exceed the authority provided by that interpretation of IEEPA.

Both the Trafficking Tariffs and the Reciprocal Tariffs are unbounded in scope, amount, and duration." *Id.* at *43-44. In keeping with its belief that the tariffs were "unbounded," the court ruled that the tariffs also ran afoul of the "major questions doctrine." *Id.* at *35.

VOS II — Federal Circuit Dissent

Judge Taranto, joined by Chief Judge Moore and Judges Prost and Chen, provided a lengthy dissent taking issue with virtually all of the assertions in both the majority opinion and the decision of the CIT below. Judge Taranto explained that under IEEPA, tariffs are not "unbounded," as under IEEPA they are subject to four specific limitations:

> (i) there must be an **unusual and extraordinary threat** to the national security, foreign policy, or economy of the United States [50 U.S.C. § 1701], § 202(a);
> (ii) the threat must wholly or substantially have a **source outside the United States**, § 202(a);
> (iii) the President must declare a **national emergency** with respect to that threat (an emergency that, under the NEA, **expires after one year** unless renewed and that also may be terminated by presidential proclamation or a congressional joint resolution), § 202(a)-(b); and
> (iv) the authorities must be exercised to **deal with that threat** and not for any other purpose, § 202(b). [*Id*. at *74-75 (Taranto, J., dissenting) (emphasis added).]

In addition, the President must **inform** Congress immediately, and provide an **update** to Congress every six months. *See Id.* at *76-77. Importantly, Congress has the **power to terminate** the state of emergency by congressional **joint resolution**.

Judge Taranto explained:

> the specified types of action that the President may take ... are not more limited than those specified in [the Trading With the Enemy Act ("TWEA")] [as they were] drawn from and essentially the same as those in TWEA, as the Supreme Court has twice noted. *See Regan v. Wald,* 468 U.S. [222] at 228 [(1984)]... ; *Dames & Moore v. Regan*, 453 U.S. [654] at 671 [(1981)]. [*VOS II* at *78.]

Judge Taranto noted that the Federal Circuit's predecessor, the United States Court of Customs and Patent Appeals, in 1975 interpreted the nearly identical language of the TWEA which allowed the President to impose tariffs in wartime, to allow tariffs in peacetime. In 1975, that court concluded that "the phrase 'by means of instructions, licenses or otherwise'" means that Congress authorized the use of means which, though not identified, were different from, and additional to, "instructions" and "licenses." *United States v. Yoshida International, Inc.*, 526 F.2d 560, 576 (C.C.P.A. 1975). Thus, said the court in 1975, "[w]e conclude, therefore, that Congress, in enacting ... the TWEA, **authorized the President**, during an emergency, to exercise the delegated substantive power, i.e., to '**regulate importation**,' by **imposing**

an import duty surcharge or by other means appropriately and reasonably related, as discussed below, to the particular nature of the emergency." *Id.* (emphasis added).

The dissent noted that, "[i]n late 1977, Congress enacted IEEPA by borrowing the very language from TWEA that *Yoshida CCPA* had construed to include tariffs [two years earlier]." *VOS II* at *106 (Taranto, J., dissenting). Thus, the following language in IEEPA, which he stated was nearly identical to that of TWEA, should be interpreted the same as in 1975.

> Definitions of the term "**regulate**" provide **broad understandings** of the term's ordinary meaning: to "fix, establish or control; to adjust by rule, method, or established mode; to direct by rule or restriction; to subject to governing principles or laws." ... This straightforward result is supported by the longstanding judicial recognition that **taxes are often a species of regulation** — specifically aimed at altering conduct. [*Id.* at *98-99 (Taranto, J., dissenting) (emphasis added) (citation omitted).]

He likewise criticized the majority's "suggested constraints of some kind of cap in duty amount" as being textually unrooted, asserting: "[N]othing in IEEPA's text further restricts the rates of imposed tariffs." *Id.* at *112 (Taranto, J., dissenting). He noted that "[s]ince IEEPA's enactment in 1977, Presidents have regularly prohibited importation of *any* articles from specified countries," and if IEEPA

allows a President to impose some tariffs, and to completely ban imports from specified countries, nothing in its text places an upper cap on allowable tariffs. *Id.* at *113 (Taranto, J., dissenting).

***Learning Resources* — U.S. District Court for the District of Columbia**

This case involved two small businesses that challenged President Trump's tariffs in the U.S. District Curt for the District of Columbia. The government moved to transfer the case to the U.S. Court of International Trade, arguing that the CIT had exclusive jurisdiction under 28 U.S.C. §§ 1581(i) and 1337(c). *Learning Res., Inc. v. Trump*, 2025 U.S. Dist. LEXIS 103492, at *3 (D. D.C. 2025). The district court ruled that the jurisdictional and merits questions merged, stating that "because IEEPA is not a 'law ... providing for tariffs,' this Court, not the CIT, has jurisdiction over this lawsuit. The statutory phrase 'regulate ... importation,' as used in IEEPA, does not encompass the power to tariff." *Id.* at *36.

STATEMENT

These consolidated cases involve a matter of exceptional importance — the lawfulness of tariffs that have been imposed by President Trump to protect our nation during his second term of office. The Trafficking Tariffs imposed on Mexico, Canada, and China were designed to block the flow into the United

States of fentanyl and other dangerous drugs.[3] The Reciprocal Tariffs were imposed on many foreign nations to counter foreign tariffs and other restrictions imposed on American exports.[4]

Over more than five decades, American manufacturing has been hollowed out by a one-sided trade war being waged against the United States,[5] which has not only caused the export of good-paying American jobs[6] overseas, but also has created economic harm resulting from the persistent annual trade deficit borne by the United States, and has undermined our defense industrial base.[7] As a result, the American People are poorer, and the American government's ability to defend the country has been weakened.[8]

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[3] *See* N. Dockery, "The Domestic Fentanyl Crisis in Strategic Context: Part III — Responding to China's Drug Warfare," Modern War Institute at West Point (Apr. 2025).

[4] *See* "Fact Sheet: President Donald J. Trump Announces 'Fair and Reciprocal Plan' on Trade," *The White House* (Feb. 13, 2025).

[5] *See* K. Harris, "Forty years of falling manufacturing employment," *Beyond the Numbers* (Nov. 2020).

[6] *See* G. Rosalsky, "What makes manufacturing jobs special? The answer could help rebuild the middle class," *NPR* (May 27, 2025).

[7] *See* R. Greenway, *et al.*, "A Strategy to Revitalize the Defense Industrial Base for the 21st Century," *The Heritage Foundation* (Apr. 7, 2025).

[8] *See* Letter from Sens. Tammy Baldwin (D-WI) and Robert Casey (D-PA) to U.S. Trade Representative Katherine Tai (Apr. 10, 2024) ("Today, our nation produces fewer than one percent of the world's commercial vessels. While several factors have led to the

In less than a half-year, trade agreements prompted by the Trump tariffs have been made with the European Union and numerous foreign nations, which over time will generate trillions of dollars of revenue to the United States Treasury.[9] Currently, in direct response to the President's imposition of reciprocal tariffs, additional nations are engaged in serious trade negotiations with the United States. For the first time in a half-century, a President is making an effort to protect America's middle class.

The theory advanced by the Plaintiffs, and accepted by the courts below, is that the President has no authority to respond to such threats, but only Congress has the power to respond to rapidly changing, and often escalating, economic threats. It is abundantly clear that Congress has no capacity to respond to economic threats with speed and focus, and if the President is prevented from protecting our country on this important front, our nation will be open to further harm.

Indeed, if this Court were to affirm the decisions under review, it would end the ability of both this and every President to respond to economic threats from foreign governments. It would require the return of

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domestic industry's decline, unfair trade practices by the [People's Republic of China]-now the global leader in shipbuilding-have been a leading contributor to the decimation of America's commercial shipbuilding capacity and the workers it employed").

[9] *See* N. Lichtenberg, "Trump's tariffs are bringing in a 'very significant' amount of revenue, top analyst says: Roughly $350 billion a year," *Fortune* (Sept. 22, 2025).

hundreds of billions of dollars of tariff revenue. Some foreign governments may be benevolent, simply taking advantage of an American government that has stood by passively while American jobs are exported to their countries, which offer exceptionally low-paid workers and have little concern about matters such as working conditions or the environment. However, other governments have long been engaged in an actual trade war against America.

Many foreign countries either have an ownership interest in companies in their country or subsidize their domestic companies to target and undermine the profitability of specific American industries by selling subsidized goods to the United States until it results in the bankruptcy of their American competitors. When other countries wage economic war against American companies to the point that they are unprofitable, American companies are falsely told they are not competitive in a global economy. In some industries, China has swooped in and purchased the entire American factory, lock, stock, and barrel, and re-established it overseas, demonstrating it was not a problem with the process.[10] When America loses its manufacturing base, it becomes dependent on goods manufactured in other countries. It loses its sovereignty.

Globalists and certain economists and politicians view the cheap goods we import as a gift from other countries, but these goods are more akin to a Trojan

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[10] *See*, *e.g.*, D. Collins, "U.S. Factory Shipped to China," *CBS News* (Mar. 5, 2004).

Horse. Manufacturing creates good paying jobs; the service industry offers low paying jobs, until robotics eliminates even those service jobs. The end game occurs when America becomes incapable of manufacturing the military goods and weaponry it needs to defend itself without depending on imports. Globalists who are hostile to the notion of the nation state have no problem with the creation of such dependence. However, this Court must be aware that the decisions below, if allowed to stand, will undermine not only our country's ability to generate good jobs and to generate wealth, but also ultimately to defend itself. It would be a betrayal of the voters who elected President Trump, as well as the American middle class.

The U.S. Constitution does not require such a result. The original plan was that there would be "free trade" **within** the United States, **not with** other countries. Until World War I, tariffs were the principal funding source of our federal government. [11] The decisions below are legally wrong and must not be allowed to stand.

SUMMARY OF ARGUMENT

The courts below have taken the hyper-technical position that IEEPA's delegation to the President of the authority to "regulate" and even "block" importation during a declared national emergency does not include the power to impose tariffs. Particularly in

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[11] *See* E. Asdourian & D. Wessel, "What are tariffs, and why are they rising?" *Brookings* (Feb. 11, 2025).

the area of national security and foreign policy, Congressional delegations of authority to the President have never been read in this fashion. The Federal Circuit's did not deny that a President has such a delegated power, but that this President has "gone too far" in exercising that power. That position is not supported by any competent authority, as this court does not have a generic "gone too far" test.

The Plaintiffs here include a few small businesses which are heavily reliant on imports and a dozen states, but this Court cannot ignore the reality that the low tariff policies which Plaintiffs wish be continued also harm an untold number of Americans. Additionally, if there actually was a presidential usurpation of a power that the Congress never delegated, one would expect that Congress would, by joint resolution, terminate the state of emergency and thereby end his authority to set tariffs — but it has not.

The CIT argued that, if IEEPA is read to grant the President the power to set tariffs, it would violate the Separation of Powers. But this argument is undermined by the fact that at least three other tariff laws discussed *infra* expressly grant the President that power, and they are not deemed objectionable. When those laws have been challenged, the courts have been properly deferential to the President's exercise of expressly delegated tariff authority.

Although not addressed directly in the opinions below, there are competing economic theories that provide an undercurrent operating in this case. Many

critics of the President's power to impose tariffs are also critics of the imposition of any tariffs. Until World War I, our national government defended American industry from unfair and harmful competition with tariffs, and, in return, the national government's budget was funded primarily from that source. However, for many decades, the United States arguably has had the least restrictive import policies on earth, and the results have been the export not of manufactured goods, but manufacturing capacity and manufacturing jobs. President Trump was elected to end this policy that rewards the few at the expense of the many, and his use of his power to set tariffs under IEEPA is perhaps his most important tool.

ARGUMENT

I. THE PRESIDENT'S IMPOSITION OF TARIFFS WAS FULLY AUTHORIZED BY IEEPA.

A. IEEPA Grants the President Broad Authority to Set Tariffs.

The tariffs at issue were imposed by the President pursuant to a congressional delegation of power under IEEPA, where 50 U.S.C. §§ 1701 and 1702(a)(1)(B) grant the President authority to "regulate … importation" whenever he declares a national emergency posed by "any unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States...."

These provisions of IEEPA delegate broad authority in general terms and without specific limitations. Congress often legislates in this manner. As Justice Barrett observed in her opinion for the Court in *Loper Bright Enterprises v. Raimondo,* 603 U.S. 369 (2024):

> ambiguities may result from an inability on the part of Congress to squarely answer the question at hand, or from a failure to even "consider the question" with the requisite precision. [*Id.* at 399.]

Such ambiguity does not invalidate the delegation. *See, e.g., Seila Law LLC v. CFPB,* 591 U.S. 197, 224 (2020); *Ziglar v. Abbasi,* 582 U.S. 120, 142 (2017); *Loving v. United States,* 517 U.S. 748, 772 (1996); *Dalton v. Spector,* 511 U.S. 462, 473-74 (1994); *Dames & Moore v. Regan,* 453 U.S. 654, 678 (1981); *FEA v. Algonquin SNG, Inc.,* 426 U.S. 548, 570 (1976); and *United States v. George S. Bush & Co.,* 310 U.S. 371, 380 (1940).

In *Dames & Moore,* the Court noted:

> Congress cannot anticipate and legislate with regard to every possible action [in which the President] might act. Such failure of Congress specifically to delegate authority does not "especially … in the area of foreign policy and national security," imply "congressional disapproval" of action taken by the Executive. *Haig v. Agee* [453 U.S. 280, 291]. On the contrary, the enactment of legislation closely

> related to the question of the President's authority in a particular case which evinces legislative intent to accord the President broad discretion may be considered to "invite" "measures on independent presidential responsibility." *Youngstown* [*Sheet & Tube Co. v. Sawyer,* 343 U.S. 579, 637] (Jackson, J., concurring). [*Id.* at 678.]

Congress has not indicated its disapproval of the President's decisions to impose tariffs. Under the National Emergencies Act, it has the power to terminate by joint resolution an emergency proclaimed by the President. *See* 50 U.S.C. § 1622. Each House of Congress is required to meet within six months of the President's proclamation of an emergency to consider a vote on such joint resolution. Neither House has done so.

B. The *VOS* Decision.

The majority opinion in *VOS II* does not conclude that IEEPA fails to provide any authority for the President's emergency proclamations or his decisions to impose the Trafficking and Reciprocal Tariffs. Rather, it ruled that the President's impositions went too far.

Lacking support in the text of IEEPA, the *en banc* majority in *VOS II* decided that the President's orders exceeded his authority because the tariffs were not limited as to duration and scope. No provision in the statute imposes either limitation. The majority simply decreed the limitations despite the limitation of

duration established by the National Emergencies Act, which provides that a declared emergency expires after a year unless renewed. *See* 50 U.S.C. § 1622(d). Likewise, the majority announced limitations on the amount of the tariffs and what products may be covered without any justification other than the majority's preference.

The *VOS II en banc* decision misapplied the teachings of this Court regarding the issues presented. For example, it did not acknowledge the deference due the President in the circumstances here where national security and foreign policy were obviously implicated. *See Trump v. Hawaii,* 585 U.S. 667, 686 (2018); *Dep't of the Navy v. Egan,* 484 U.S. 518, 530 (1988) (deference given "unless Congress specifically provided otherwise"); *Dalton v. Spector* at 469; *Regan v. Wald*, 468 U.S. 222, 242 (1984); *United States v. George S. Bush & Co.* at 379-80. It ignored *Soto v. United States*, 605 U.S. 360, 371 (2025), and *FAA v. Cooper*, 566 U.S. 284, 291 (2012), when ruling that the absence of the term "tariff" in 50 U.S.C. § 1702(a)(1) permitted it to conclude that Congress had not delegated the authority to impose tariffs. It failed to acknowledge the decisiveness of the decision in *United States v. Curtiss-Wright Export Corp.,* 299 U.S. 304 (1936), regarding the applicability of the non-delegation doctrine to legislation granting authority to the President involving matters of national security and foreign affairs.

In addressing the "major question" doctrine, it failed to acknowledge that this Court has not applied the doctrine in the context of national security and

foreign affairs. *See FCC v. Consumers' Research,* 145 S. Ct. 2482, 2516 (2025) (Kavanaugh, J., concurring). It also ignored the distinction between a delegation to an agency and a delegation to the President, which is a significant factor in resolving disputes concerning the "major question" doctrine. *See id.*; *Seila Law LLC* at 224.

C. The *Learning Resources* Decision.

In *Learning Resources*, the district court lacked subject matter jurisdiction to address the Plaintiffs' claims that President Trump's imposition of his 2025 tariffs was unauthorized under IEEPA. Congress has provided that the Court of International Trade exercises exclusive jurisdiction over actions arising out of any law providing for "tariffs, duties, fees, or other taxes on the importation of merchandise for reasons other than the raising of revenue." 28 U.S.C. § 1581(i)(1)(B). The district court in *Learning Resources* concluded that IEEPA is not a federal law providing for tariffs and that the President's orders imposing the tariffs are *ultra vires*. *Learning Resources at* *37.

On their face, the provisions of IEEPA and the President's order demonstrate that the tariffs were imposed to stem the flow of dangerous drugs, to address the unfair trade relationships with foreign nations, and to protect and restore domestic manufacturing industries. The fact that the tariffs also raise revenue does not support the *Learning Resources* court's conclusion that IEEPA is not included within the meaning of "regulation" in 28

U.S.C. § 1581(i)(1). *See Sunshine Anthracite Coal Co. v. Adkins,* 310 U.S. 381, 393 (1940); *Sonzinsky v. United States,* 300 U.S. 506, 513 (1937) ("Every tax is in some measure regulatory."); *Gibbons v. Ogden,* 22 U.S. 1, 202 (1824).

The *Learning Resources* court concluded that the imposition of tariffs cannot be justified under the provisions of IEEPA because the term "tariff" does not appear in the statute. The term also does not appear in either Clause 1 or Clause 3 of Article I, § 8 of the Constitution. The district court's reasoning that historical practice establishes that IEEPA does not authorize tariffs is unavailing because that historical practice simply reflected that IEEPA had not been invoked as a justification for the imposition of tariffs and not that it had been determined that IEEPA could not be a basis for such imposition.

Yet another basis for the district court's conclusion that IEEPA does not authorize the imposition of tariffs was its argument that if "regulate" were construed to authorize the imposition of tariffs, it would necessarily empower the President to tariff exports, too. *Learning Resources* at *31. The imposition of export taxes is prohibited by express provision of the Constitution. Article I, § 9, cl. 5. Construing IEEPA to authorize tariffs on imports, therefore, cannot and does not authorize export taxes.

Because the district court in *Learning Resources* lacked subject matter jurisdiction, its memorandum opinion should be disregarded by this Court.

D. Congress Has Never Attempted to Impede President Trump from Exercising Powers that Plaintiffs Argue Are Exclusively Congressional.

The economic, foreign policy, and national security crises that the tariffs address have been forming and worsening for years. Although aware of the threats for decades, neither prior Presidents nor prior Congresses have dealt with them effectively, causing great harm to the American People. In his first term, President Trump initiated a program to address these threats by imposing tariffs on China and certain other nations to address the unfair trading system that penalizes American exports. In 2018, he also imposed tariffs on steel and aluminum imports from most nations and a tariff on all imports from Mexico. President Biden kept most of the Trump tariffs in place and added tariffs on electric vehicles and semiconductors from China, which produced more tariff revenues during the Biden Administration than obtained during the first Trump term.[12]

During the 2024 Presidential campaign, President Trump pledged to impose tariffs on countries that have been taking advantage of us. Congress took no action to weaken the President's statutory authority granted to impose tariffs, even though fully aware that Mr. Trump had pledged to implement an even more

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[12] "FACT SHEET: President Biden Takes Action to Protect American Workers and Businesses from China's Unfair Trade Practices," *The White House* (May 14, 2024).

aggressive tariff strategy than he had imposed during his first term.

The corporate plaintiffs in *VOS* are a few small businesses who believe their corporate profits will be impaired by the Trump tariffs. While lost profits are an important consideration, myopic focus on a few businesses fails to show the entire picture. The state plaintiffs in *VOS* are led by the political opponents of the President, who have many reasons for their opposition. However, the law is not on their side. The argument that Congress vests the power to regulate trade and to impose taxes in Congress is no answer, as Article I, § 8 vests all the legislative powers of the federal government in Congress, but that does not mean that Congress may not delegate those powers to the President, especially those relating to foreign relations and the national defense.

With IEEPA, Congress wisely entrusted the power to adjust tariffs to the President, and whether a judge or a Plaintiff disagrees with the precise manner in which President Trump is using that power does not diminish in the slightest the fact that he is exercising a power properly delegated to him by Congress.

II. VARIOUS TARIFF LAWS HAVE VESTED AUTHORITY TO MODIFY TARIFFS IN THE PRESIDENT.

The CIT believed that allowing the President broad authority to negotiate tariffs under IEEPA violates the Separation of Powers, or at least violates the non-delegation doctrine. *See VOS I* at 1370-72.

The courts below appear to have been operating under the mistaken belief that President Trump's adjustment of tariffs is virtually unprecedented in our nation's history. On several occasions, Congress has granted the specific power to set tariffs to the Executive Branch.

A. IEEPA Is Not the Only Grant of Authority for Presidents to Adjust Tariffs.

The Federal Circuit described the Trump tariffs as an assumption of "'sweeping power,'" and stated that "[e]ven under IEEPA's predecessor, TWEA, a President has invoked his authority to impose tariffs on only one occasion, and on that occasion, the tariffs were of limited scope and duration." *VOS II* at *39, *37. The connection between TWEA and IEEPA is discussed in the Statement of the Case, *supra*, but it is wrong to assume that only once has there been a Presidential exercise of a Congressional grant of authority to the President to modify tariffs. The government had space only to identify, but not discuss, several statutes authorizing the Executive Branch to impose or modify tariffs or duties on imports, three of which are elaborated upon below. *See* Opening Brief for the Respondents in No. 24-1287 and the Petitioners in No. 25-250 at 13.

1. Trade Expansion Act of 1962.

Section 232 of the Trade Expansion Act of 1962, codified at 19 U.S.C. § 1862(c)(1)(A)(ii), provides that when the Secretary determines that a product is being imported in such quantities or circumstances as to

jeopardize national security, the President is authorized to "determine the nature and duration of the action that, in the judgment of the President, must be taken to **adjust the imports** of the article and its derivatives so that such imports will not threaten to impair the national security." (Emphasis added). During President Trump's first term, the CIT upheld a presidential imposition of tariffs on steel imports from Russia under *Severstal Exp. GMBH v. United States,* 2018 Ct. Intl. Trade LEXIS 38 (Court Int'l Trade 2018).

2. Tariff Act of 1930.

Section 338 of the Tariff Act of 1930, codified at 19 U.S.C. § 1338, provides that "[t]he President when he finds that the public interest will be served shall by proclamation specify and declare **new or additional duties**" on foreign countries, "whenever he shall find as a fact that such country":

> (1) Imposes, directly or indirectly, upon the disposition in or transportation in transit through or reexportation from such country of ... product of the United States any unreasonable charge, exaction, regulation, or limitation which is not equally enforced upon the like articles of every foreign country; or
> (2) Discriminates in fact against the commerce of the United States ... by or in respect to any customs, tonnage, or port duty, fee, charge, exaction, classification, regulation, condition, restriction, or prohibition, in such manner as to place the commerce of the United States at

> a disadvantage compared with the commerce of any foreign country. [19 U.S.C. § 1338(a) (emphasis added).]

The statute gives the President discretion as to when to remove the tariff (19 U.S.C. § 1338(c)), and permits tariffs under that statute of up to 50 percent of the value of the goods (19 U.S.C. § 1338(d)).

3. Trade Act of 1974.

Section 301 of the Trade Act of 1974, codified at 19 U.S.C. § 2411, provides that if "an act, policy, or practice of a foreign country ... is unjustifiable and burdens or restricts United States commerce," the U.S. Trade Representative, "subject to the specific direction, if any, of the President," may "impose **duties** or other import restrictions on the goods of, and, **notwithstanding any other provision of law**, fees or restrictions on the services of, such foreign country for such time as the Trade Representative determines appropriate." 19 U.S.C. § 2411 (emphasis added). Nothing in the statute places an upper limit on the amount of such tariffs.

The undeniable fact that Congress has granted the President broad discretion in various statutes to adjust tariffs demonstrates that the similar grant of authority to change tariffs under IEEPA is neither novel nor a violation of the separation of powers.

B. Courts Have Been Deferential to Presidential Exercises of Congressionally Delegated Tariff Authority.

Until the cases under review, both the CIT and the Federal Circuit have been highly deferential to presidential determinations triggering tariff adjustments. President Trump's actions under the Tariff Act of 1930, discussed in Section II.A., *supra*, were challenged by plaintiffs employing similar arguments to those used by plaintiffs below. In the earlier challenge, "Plaintiffs argue that the President has misconstrued Section 1862 by over-reading what can constitute a threat to national security," just as the CIT here believes the President is misreading "dealing with" a particular threat. *Severstal Exp. GMBH at 22*. Like the courts below, the plaintiffs argued that the President was really targeting economic gain, not a national security threat, with the steel tariffs. Yet the CIT ruled, "[w]here, as here, an industry is found to produce goods vital to U.S. national security, ... the court finds it **highly unlikely** that Presidential statements indicating an overarching economic rationale for Section 1862 tariffs are clearly **inconsistent with that statute's grant of authority**." *Id.* at 27-28 (emphasis added). The same deference should be given here, where the President has found that:

> "[i]ncreased reliance on foreign producers for goods ... has compromised U.S. economic security by rendering U.S. supply chains vulnerable to geopolitical disruption and supply shocks." ... Those deficits "and the

> concomitant loss of industrial capacity, have compromised military readiness," and "this vulnerability can only be redressed through swift corrective action to rebalance the flow of imports into the United States." [Pet. for Cert. in 25-250 at 12.]

In 1985, the Federal Circuit asserted: "[f]or a court to interpose, there has to be a clear misconstruction of the governing statute, a significant procedural violation, or action outside delegated authority. On the other hand, 'the President's findings of fact and the motivations for his action are not subject to review.'" *Maple Leaf Fish Co. v. United States*, 762 F.2d 86, 89 (Fed. Cir. 1985). The Federal Circuit's view is consistent with similar decisions of this Court: "[w]here a statute ... commits decisionmaking to the discretion of the President, judicial review of the President's decision is not available." *Dalton* at 477.

Yet suddenly, the courts below have reversed their historic policy of deference to presidential tariff decision-making. The CIT claims that the "trafficking tariff" does not in fact "deal with" the problem of narcotics trafficking. "The Trafficking Orders do not 'deal with' their stated objectives," the court opined. *VOS I* at 1381. "The Government's reading would cause the meaning of 'deal with an unusual and extraordinary threat' to permit any infliction of a burden on a counterparty to exact concessions, regardless of the relationship between the burden inflicted and the concessions exacted." *Id.* at 1382. To achieve benefits for the nation would appear to be the precise reason for giving the President power to use

trade law to "deal with" foreign threats: pressuring foreign governments that create or allow threats against the United States to stop doing so.

As clearly as any other statute, IEEPA commits to the President's discretion the declaration of a national emergency:

> Any authority granted to the President by section 1702 of this title may be exercised to deal with any unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States, **if the President declares a national emergency with respect to such threat**. [50 U.S.C. § 1701 (emphasis added).]

Further, Congress provided that "[t]he President may issue such regulations, including regulations prescribing definitions, as may be necessary for the exercise of the authorities granted by this chapter." 50 U.S.C. § 1704. Accordingly, the President has been granted the authority to define what constitutes an "unusual and extraordinary threat," and what qualifies as "dealing with" those threats. There was no reason for the courts below to reverse course and grant to themselves the authority to determine when emergencies exist and what trade actions might "deal with" a given emergency.

III. SOME OPPONENTS OF THE TRUMP TARIFFS ARE OPPONENTS OF ALL TARIFFS.

At least some of the opposition to the Trump tariffs appears to be as much grounded in a hostility to tariffs of any sort, as it is to the imposition of tariffs by this President under IEEPA. For example, one *amicus* brief filed when *VOS II* was before the Federal Circuit asserts: "The President's novel tariffs, purportedly imposed to combat illegal drug operations and trade imbalances, have inflicted significant costs on thousands of American business owners who rely on imports."[13] The benefits of cheap imports are lauded, while the costs visited on the nation and the American People from offering the world an open market for their goods are ignored.

Without question, in the short run, those whose businesses which now benefit from low-cost imports will be required to pay more for what they import, but they are not the only Americans with an interest in international trade. The nation cannot only serve the interests of those who have profited from exporting our industry overseas. For many decades, America has been the most open market in the world, as our political leaders have allowed other countries to sell their goods here, even though those same countries place high tariffs and other restrictions on American exports.

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[13] CATO Institute *Amicus* Brief, *VOS II* (July 8, 2025) at 2.

American Presidents have for far too long refused to guard American businesses against trade wars conducted by both our nation's allies and enemies allowing foreign goods into the country from low-cost countries, bankrupting vital American business while exporting the good-paying jobs of American workers. Under President Trump, as the result of his fulfilling campaign promises, all this has changed, and those who profited richly from pre-Trump trade policies are now demanding federal courts to protect those few at the expense of the many.

For decades, the American government has failed to protect Americans through the regulation of trade. Most nations understand that "[e]very nation has "a right to prohibit the entrance of foreign merchandise.... [I]f one nation has for a time permitted another to come and trade in the country, she is at liberty, whenever she thinks proper, to prohibit that commerce — to restrain it — to subject it to certain regulations; and the people who before carried it on cannot complain of injustice." E. de Vattel, The Law of Nations (Johnson's Book Sellers: 1854) at 38-40. Indeed, de Vattel explained that each nation "ought to take particular care to encourage the commerce that is advantageous to his people, and to suppress or lay restraints upon that which is to their disadvantage." *Id*. at 42.

America has followed a different path, where "free trade" has been our mantra. The question now should

be what Dr. Phil asks: "How's that working for you."[14] No doubt, the policies of prior Presidents have been good for some, as "data from the Federal Reserve shows that the top 1 percent of wealthy individuals in the U.S. now have more wealth than the entire middle class combined."[15] However, those same policies have hollowed out America's manufacturing capability and created through the middle of our nation what is sadly described as "the rust belt."

The theory of free trade as envisioned by Adam Smith in The Wealth of Nations describes a world that certainly has not existed for the past half-century, and may never have existed, as each country, except the United States, has looked out for its own economic interests. American businesses have not lost out to foreign businesses to inefficiency or failure to innovate or even David Ricardo's theory of comparative advantage, but because no industry, no matter how productive, can compete indefinitely against a foreign industry subsidized by the wealth of a foreign country. Those who reject nationalism, embrace Globalism, and embrace open borders see no problem with U.S. dependence on other nations, do not concern themselves with the national security problems faced by America should we be unable to manufacture what we need to be an independent sovereign state.

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[14] Dr. Phil, "Dr. Phil: The One Question You Need to Ask to Get What You Really Want," *Oprah.com* (undated).

[15] J. Kaplan & A. Kiersz, "The top 1% officially have more money than the whole middle class," *Business Insider* (Oct. 12, 2021).

> Alexander Hamilton, and our other founding fathers understood that any nation that desires to remain politically independent must also protect its economic independence and strive toward as much self-sufficiency as possible. The whole concept of nationhood rests upon this premise. Only those nations which intend to eventually surrender their sovereignty completely will abandon protectionism in trade to the extent that the United States has .... [W.J. Gill, Trade Wars Against America (Praeger: 1990) at xii.]

From the foundations of our national government duties have been imposed on imports, providing untold prosperity for Americans. These are policy matters on which even historical rivals Hamilton and Jefferson agreed. *Id*. at 14.

> [T]he First Congress of the United States gave top priority to passage of protectionist legislation.... President George Washington, having urged adoption of such a measure for "the safety and interest of the People," signed the trade bill into law on July 4, 1789, the first Independence Day under the new Union created by the Constitution. [*Id*.]

Although there was a time when it took weeks for news from overseas to reach the United States that Congress could deliberate and set tariffs itself, but in a new environment and a hostile world, where threats can emerge and change rapidly, the power to set tariffs had to be, and was, delegated to the President. The

Trump tariffs have been designed to remedy the problems our nation has suffered under prior Presidents by stimulating capital investment in America; bringing back good-paying manufacturing jobs; rebuilding our defense industrial base; and eliminating the vulnerability of our country to the shifting and often hostile policies of other countries.

CONCLUSION

For the foregoing reasons, the judgment of the district court in No. 24-1287 should be vacated and the case remanded with instructions to dismiss for lack of jurisdiction. The judgment of the court of appeals in No. 25-250 should be reversed.

Respectfully submitted,

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