

A Discussion of *Learning Resources, Inc.*, in which the Supreme Court Struck Down the President’s Claim to Impose Tariffs at Will

by Robert S. Horwitz

You undoubtedly know by now that on Friday, February 20, 2026, the United States Supreme Court held that Pres. Trump does not have the authority under the International Emergency Economic Powers Act (IEEPA) to impose tariffs on imports. Not one to be deterred, Pres. Trump immediately announced the imposition of a 10% global tariff under §122 of the Trade Act of 1974. The following day he announced on Truth Social that he was increasing the global tariff to 15%, the maximum under the Trade Act. Unless extended by Congress, these tariffs expire after 150 days.

Background of the Cases

Let’s look at the IEEPA and the Supreme Court’s decision in *Learning Resources, Inc. v. Trump*, 607 U.S. ____, 2026 WL 477534 (Feb. 20, 2026). The case before the Supreme Court consolidated two cases: *Learning Tree Resources, Inc. v. Trump*, filed in the District Court for the District of Columbia, and *V.O.S. Selection v. Trump*, filed in the Court of International Trade (CIT).¹ The district court held it had jurisdiction over the *Learning Resources* case and concluded that the IEEPA did not grant the president the power to impose tariffs. The CIT granted summary judgment for the plaintiffs in *V.O.S. Selection* and held that the IEEPA does not authorize the challenged tariffs and the Federal Circuit affirmed, stating the tariffs were “unbounded in scope, amount, and duration.”² 149 F.4th 1312 (2025). The Supreme Court granted petitions for certiorari and consolidated both cases.

The statutory language around which the dispute raged, 50 U.S.C. §1702(a)(1)(B), says the President may “regulate ... importation.” The IEEPA was enacted in 1977. To invoke the

¹ The plaintiffs in *Learning Resources* were several small businesses. The plaintiffs in *V.O.S. Selection* were several small businesses and the States of Oregon, Arizona, Colorado, Connecticut, Delaware, Illinois, Maine, Minnesota, Nevada, New Mexico, New York, and Vermont. The Supreme Court held that the district court did not have jurisdiction over the *Learning Resources* case because sole jurisdiction over tariff cases was vested in the CIT.

²Internal quotation marks and citations from quoted portions of the opinions have been deleted.

emergency powers under the IEEPA, a president must identify “unusual and extraordinary” threats to the U.S.’s national security, foreign policy, or economy originating primarily outside the U.S. 50 U.S.C. § 1701(a). Sec. 1702(a)(1)(B) lists the actions that the president can take to deal with the threats. Pres. Trump claimed he was addressing two foreign threats, which he declared national emergencies: (1) the influx of illegal drugs from Canada, Mexico, and China, and (2) the U.S.’s “large and persistent” trade deficits. He initially imposed 25% tariffs on Canada and Mexico and 10% tariffs on China. The tariffs were increased, decreased, and modified several times after being announced. No prior president had ever claimed authority to impose tariffs of any sort under the IEEPA.

The Majority Opinion

The majority opinion is divided into Parts I, II-A-1, II-A-2, and II-B. The majority consisted of Chief Justice Roberts, who wrote the majority opinion, and Associate Justices Kagan, Sotomayor, Gorsuch, Barrett, and Jackson. Associate Justices Kagan, Sotomayor, and Jackson joined in Parts I, II-A-1 and II-B and concurred in the judgment. Part I gave the background of the case. Part II begins:

Based on two words separated by 16 others in Section 1702(a)(1)(B) of IEEPA—“regulate” and “importation”—the President asserts the independent power to impose tariffs on imports from any country, of any product, at any rate, for any amount of time. Those words cannot bear such weight.

Part II-A-1 discusses the power granted to Congress by Art. I, sec. 8, cl. 1 of the Constitution, which “specified that ‘The Congress alone shall have the Power To lay and Collect Taxes, Duties, Imposts and Excises.’” The taxing power was the first enumerated in the Constitution because, according to Hamilton, it is “the most important of the authorities to be conferred upon the Union.” This was recognized by the Supreme Court as a “power to destroy” (*McCulloch v. Maryland*, 4 Wheat. 316 (1819)) and as a power “necessary to the existence and prosperity of a nation—the one great power upon which the whole national fabric is based.” (*Nicol v. Ames*, 173 U.S. 509, 515 (1899)).

According to the majority, the power to impose tariffs has always been viewed as part of the taxing power and the Framers expected the Government would for “a long time depend ... chiefly on tariffs for revenue.” The Government conceded “as it must” that the president had no inherent power to impose tariffs during peacetime. Instead, the Government argued that the words “regulate” and “importation” were “a sweeping delegation of Congress’s power to set tariff policy-authorizing the President to impose tariffs of unlimited amount and duration, on any product from any country.”

Part II-A-2 is based on the major questions doctrine under which the delegation of power by Congress of vast economic and political significance must be clearly spelled out. Associate Justices Kagan, Sotomayor, and Jackson did not join this part of the majority opinion. This part of the opinion begins by noting that the Court has been reluctant to read into “ambiguous statutory text extraordinary delegations of Congress’s powers,” citing cases where the Court has struck down (a) student loan forgiveness, (b) regulations eliminating the use of coal, and (c) the vaccine mandate. These cases counsel skepticism in reading broad delegations of power into ambiguous statutory texts. Separation of powers and common sense suggest Congress would not have used ambiguous language to delegate “highly consequential powers.” This is especially true “where ... the purported delegation involves the core congressional power of the purse.” If Congress were to relinquish the power of the purse “a reasonable interpreter would expect it to do so clearly.”

The Court then turned to the history of Congress’s delegation of tariff powers. According to the majority, where Congress has done so, it has done so explicitly, subject to strict limits, and has “conditioned exercise of the tariff power on demanding procedural prerequisites.” The Government reads the IEEPA as giving the president the power to unilaterally impose unbounded tariffs “unconstrained by the significant procedural limitations on other tariff statutes and free to issue a dizzying array of modifications at will. The Court said the Government’s reading represents a “transformative expansion” of presidential authority over tariffs and “as represented by the exercise of that power in this case over the broader economy as well.”

The Court next examined the history of the IEEPA, noting that no president prior to Trump had invoked it to impose any tariffs. This lack of historical precedent “is a telling indication that the tariffs extend beyond the President’s legitimate reach.” It termed Pres. Trump’s assertion of broad statutory power over the national economy “extravagant by any measure.” The stakes in this case “dwarf those of other major question cases.”

The three judges joining in Part II-A-2 termed the arguments against application of the major questions doctrine “not convincing.” The Court pointed out that it had in prior cases rejected the Government’s argument that the statute should not apply to emergency legislation. It also found unconvincing the Government’s and the principal dissent’s argument that there is a foreign affairs exception to the major questions doctrine. While recognizing that the president has some authority over foreign affairs, this does not extend to tariffs, and the Court would expect any statute that gave the president power over tariffs would not use vague language to do so. According to the Court the central thrust of the Government’s and the principal dissent’s arguments was that any statute addressing major questions should be broadly construed. Emergencies are “often a ready pretext for



usurpation of congressional power.” Ending Part II-A-2, the Court stated that the president must point to “clear congressional authorization to justify his extraordinary assertion of the power to impose tariffs. He cannot.”

All six justices joined Part II-B of the opinion. It starts by noting that the IEEPA lists powers granted to the president but makes no mention of tariffs or duties. This was significant. If Congress meant to delegate the power to impose tariffs, it would have done so expressly, as it had in other statutes. The “power to regulate ... importation ... does not fill that void.” Regulate is what the Government does daily. It is not usually thought to include taxation. Many statutes contain the word “regulate” but the Government could not identify any in which the power to regulate includes the power to tax. The Court gave, as an example, the fact that the SEC is authorized to “regulate the trading of securities” but not to tax the trading of securities. While taxation can be a means of regulation, it does not follow that the power to regulate includes the power to tax. Further, reading the statute the way the Government does would render the IEEPA partially unconstitutional, since it grants the power to “regulate ... exportation,” which would mean the president could tax exports, something expressly prohibited by Article I §9, cl. 5 of the Constitution.

The IEEPA contains nine verbs, including “regulate,” each authorizing a distinct action the president can take. None includes “the distinct and extraordinary power to raise revenue. And the fact that no president has ever found such power in the IEEPA is strong evidence that it does not exist.” The Court refused to list the powers the president has to “regulate ... importation” but noted that it does not “embrace the power to impose tariffs.” When Congress has done so, it has done so clearly and with careful constraints. It did neither here.”

The Court finally rejected several arguments advanced by the Government and the dissent:

1. That the IEEPA includes the powers to “compel” and “prohibit” and thus “regulate” must include the tool of tariffs was rejected since tariffs are different in kind from the other authorizations in the IEEPA and are outside the spectrum between “compel” and “prohibit.”
2. That the Court of Customs and Patent Appeals construed the Trading with the Enemies Act to authorize the president to impose limited tariffs; while judicial interpretation sometimes is seen as being incorporated into legislation, this is only when the term’s meaning is “well-settled” before adoption. “A single, expressly limited opinion from a specialized intermediate appellate court does not clear that hurdle.”



3. That Supreme Court wartime precedents since all parties agree that the president “has no inherent peacetime power to impose tariffs.”
4. Reliance on other Supreme Court cases was rejected either because the statute in question referenced “duty or other import restrictions” or did not involve tariffs or the power to regulate.

Part III was the conclusion. The Court stated:

The President asserts the extraordinary power to unilaterally impose tariffs of unlimited amount, duration, and scope. In light of the breadth, history, and constitutional context of that asserted authority, he must identify clear congressional authorization to exercise it.

IEEPA's grant of authority to “regulate ... importation” falls short. IEEPA contains no reference to tariffs or duties. The Government points to no statute in which Congress used the word “regulate” to authorize taxation. And until now no President has read IEEPA to confer such power.

We claim no special competence in matters of economics or foreign affairs. We claim only, as we must, the limited role assigned to us by Article III of the Constitution. Fulfilling that role, we hold that IEEPA does not authorize the President to impose tariffs.

The Court affirmed the *V.O.S. Selection* case. It vacated and remanded the *Learning Resources* case with directions to dismiss for lack of jurisdiction.

The Concurring Opinions

The first concurring opinion was Justice Gorsuch's. It is more than twice the length of the majority opinion. He concurs in full with the majority opinion under the major questions doctrine under which “the President must identify clear statutory authority for the extraordinary, delegated power he claims.” The president cannot meet this standard.

Initially, Justice Gorsuch addresses and critiques the other concurring opinions: Justice Barrett, who agrees with the opinion in full but suggests that the major questions doctrine is just routine statutory interpretation; Justice Kagan, who suggests that the same result can be reached using normal methods of statutory construction; Justice Jackson, who agrees with Justice Kagan and criticizes the failure of the majority opinion and the dissent to consider the legislative history of the IEEPA.



Justice Gorsuch critiques the principal dissent, pointing out that its members have joined past majority decisions based on the major questions doctrine but do not use the doctrine here, and Justice Thomas' dissent, which argues that Congress can hand over virtually all its powers to the president without limitation.

Justice Gorsuch's concurrence includes a detailed history of the major questions doctrine from the English common law through the late twentieth century. He ends:

For those who think it important for the Nation to impose more tariffs, I understand that today's decision will be disappointing. All I can offer them is that most major decisions affecting the rights and responsibilities of the American people (including the duty to pay taxes and tariffs) are funneled through the legislative process for a reason. Yes, legislating can be hard and take time. And, yes, it can be tempting to bypass Congress when some pressing problem arises. But the deliberative nature of the legislative process was the whole point of its design. Through that process, the Nation can tap the combined wisdom of the people's elected representatives, not just that of one faction or man. There, deliberation tempers impulse, and compromise hammers disagreements into workable solutions. And because laws must earn such broad support to survive the legislative process, they tend to endure, allowing ordinary people to plan their lives in ways they cannot when the rules shift from day to day. In all, the legislative process helps ensure each of us has a stake in the laws that govern us and in the Nation's future. For some today, the weight of those virtues is apparent. For others, it may not seem so obvious. But if history is any guide, the tables will turn, and the day will come when those disappointed by today's result will appreciate the legislative process for the bulwark of liberty it is.

Justice Barrett's concurrence opines that the major questions doctrine is "best understood as an ordinary application of textualism" where statutes are interpreted in their context.

Justices Kagan, Sotomayor, and Jackson concurred in part and in the judgment. These three justices eschew the use of the major questions doctrine, arguing that "ordinary tools of statutory construction amply support today's result. I do not join the part of the opinion invoking the so-called major questions doctrine." It then argues that using those tools it is obvious that the IEEPA did not delegate to the president the power to impose tariffs. "For all those reasons, straight-up statutory construction resolves this case for me; I need no major-questions thumb on the interpretive scales."

Justice Jackson concurred in part and in the judgment. In her opinion, legislative history, particularly Congressional reports, “are among the best evidence of what Congress sought to accomplish with its enactments.” Based on the legislative history of the IEEPA, Congress did not intend to give the president the power to impose tariffs. She criticizes the dissent and the majority opinion for not considering legislative history.

The Dissenting Opinions

The principal dissent was authored by Justice Kavanaugh, joined by Justices Alito and Thomas. They argue that based on the statutory text, history, and precedent, the IEEPA’s phrase “regulate ... importation” vested the president with the power to impose tariffs on imports. The IEEPA was enacted one year after the Court of Customs and Patent Appeals held that identical language authored Pres. Nixon to impose tariffs. According to the dissent, this shows that Congress understood that “regulate ... importation” meant the power to impose tariffs.

Justice Thomas dissented, arguing that the principal dissent’s interpretation is consistent with the separation of powers. According to Justice Thomas, Congress can delegate all its powers to the president except “core legislative power, which is the power to make substantive rules setting the conditions for deprivations of life, liberty, or property. Neither Clause prohibits Congress from delegating other kinds of power.” The power to impose tariffs is not among these core powers. According to Justice Thomas, importation of goods into the United States is a “privilege” and a tariff is nothing more than a fee for a privilege, much like a fee to enter a government park or to mail a letter. Congress has the power to, and did, delegate the power to impose tariffs to the president in the IEEPA. He concludes “In today’s cases, neither the statutory text nor the Constitution provide a basis for ruling against the President. I respectfully dissent.”

My Take

I believe the Court reached the correct result. From my viewpoint “to regulate” does not mean “to tax.” A major concern for businesses who paid the tariffs is how to get a refund of the tariffs. For this, none of the seven opinions provide any hint. As Justice Kavanaugh wrote in dissent:

The United States may be required to refund billions of dollars to importers who paid the IEEPA tariffs, even though some importers may have already passed on costs to consumers or others. As was acknowledged at oral argument, the refund process is likely to be a “mess.”

Unlike claiming a refund of income, estate, gift, or employment taxes, the process of obtaining a refund of tariffs is complex. Normally, the person who can claim the refund is the “importer of record.” Thus, the business that purchased the goods from an importer for resale cannot claim a refund.

The procedure to claim a refund depends on whether the imported goods are considered “unliquidated” or “liquidated.” When importing goods into the United States, the importer pays an estimated duty. The U.S. Customs and Border Protection (CBP) then determines the final duty, a process that can typically take ten months. When the final duty is computed the goods are deemed “liquidated.” Prior to that time, the goods are deemed “unliquidated.” There are different procedures for obtaining a refund for unliquidated and liquidated goods. Where goods are unliquidated, the business can electronically submit a Post-Summary Correction with CBP. See: <https://www.cbp.gov/trade/programs-administration/entry-summary/post-summary-correction>. Where the goods have been liquidated, the importer must file a protest within 180 days of liquidation; if the protest is denied, the importer has 180 days in which to file suit in the Court of International Trade. Alternatively, the importer can sue in the Court of International Trade within two years of liquidation.

Of course, everything is in the air. Although the Department of Justice stated prior to the decision that if the Government loses any tariffs paid under the IEEPA will be refunded, since the ruling both President Trump and Secretary Bessant have indicated that the Government will litigate paying refunds. And over a thousand businesses have already filed suit for a refund. See <https://www.forbes.com/sites/alisondurkee/2026/02/24/trumps-latest-tariff-flip-flop-opposing-refunds-after-promising-them-in-court/>. An importer who believes they are owed a refund should consult with qualified professionals.

Robert S. Horwitz is a Principal at Hochman Salkin Toscher Perez P.C., former Chair of the Taxation Section, California Lawyers’ Association, a Fellow of the American College of Tax Counsel, a former Assistant United States Attorney and a former Trial Attorney, United States Department of Justice Tax Division. He represents clients throughout the United States and elsewhere involving federal and state administrative civil tax disputes and tax litigation as well as defending clients in criminal tax investigations and prosecutions. He received the 2022 Joanne M. Garvey Award for lifetime achievement in and contribution to the field of tax law by the Taxation Section of the California Lawyers’ Association. Additional information is available at <http://www.taxlitigator.com>.