

No. 25-250

IN THE
Supreme Court of the United States

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

Petitioners,

v.

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

Respondents.

**On Writ of Certiorari
to the United States Court of Appeals
for the Federal Circuit**

**BRIEF OF THE WASHINGTON STATE AMICI
IN SUPPORT OF RESPONDENTS**

STEVEN W. FOGG
CORR CRONIN LLP
1015 Second Avenue, Floor 10
Seattle, WA 98104
(206) 625-8600
sfogg@corrchronin.com

*Counsel for Washington State
Amici*

QUESTIONS PRESENTED

1. Whether the International Emergency Economic Powers Act (“IEEPA”), Pub. L. No. 95-223, Tit. II, 91 Stat. 1626, authorizes the tariffs imposed by President Trump pursuant to the national emergencies declared or continued in Proclamation 10,886 and Executive Orders 14,157, 14,194, 14,195, and 14,257, as amended.

2. If IEEPA authorizes the tariffs, whether the statute unconstitutionally delegates legislative authority to the President.

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	iii
INTEREST OF AMICI CURIAE	1
SUMMARY OF ARGUMENT	2
ARGUMENT	4
I. IEEPA Must Be Interpreted Narrowly to Respect Separation of Powers Principles.....	4
II. The Nondelegation Doctrine Preserves Separation of Powers and Prevents Arbitrary Governance.....	5
III. Meaningful Limits on Delegation Safeguard Political Accountability and Democratic Governance.....	7
IV. Unchecked Delegation Disrupts Federalism and Imposes Concrete Harms on Washington State Amici.....	9
CONCLUSION	12

TABLE OF AUTHORITIES

Cases

<i>FCC v. Consumers’ Research</i> , 606 U.S. ----, 145 S. Ct. 2482 (2025).....	5
<i>Gundy v. United States</i> , 588 U.S. 128 (2019)	9
<i>Industrial Union Dept., AFL-CIO v. American Petroleum Inst.</i> , 448 U.S. 607 (1980)	6
<i>Mistretta v. United States</i> , 488 U.S. 361 (1989)	6, 7

Constitutional and Statutory Provisions

U.S. CONST. art. I, § 8 cl. 1	3, 4, 8
U.S. CONST. art. X	3
50 U.S.C. § 1701(b)	3, 4
50 U.S.C. § 1702(a)(1)(A)	3, 4

Other Authorities

Peter Baker, <i>Trump Declares a National Emergency, and Provokes a Constitutional Clash</i> , N.Y. TIMES (Feb. 15, 2019).....	8
Ronald A. Cass, <i>Delegation Reconsidered: A Delegation Doctrine for the Modern Administrative State</i> , 40 HARV. J.L. & PUB. POL’Y 147 (2017)	6
Federalist No. 47 (James Madison)	5
Timothy Meyer & Ganesh Sitaraman, <i>Trade and the Separation of Powers</i> , 107 CALIF. L. REV. 583 (2019).....	7

Martin H. Redish, <i>Pragmatic Formalism, Separation of Powers, and the Need to Revisit the Nondelegation Doctrine</i> , 51 LOY. U. CHI. L. J. 363 (2020).....	9
Cameron Silverberg, <i>Trading Power: Tariffs and the Nondelegation Doctrine</i> , 73 STANFORD L. REV. 1289 (2021).....	7
The Northwest Seaport Alliance, <i>Weekly NWSA Volumes & Metrics Report</i>	12
Washington State Office of Financial Management, <i>Crosswinds Ahead: The Turbulent Tariff Toll on Washingtonians</i> (2025)	11

INTEREST OF AMICI CURIAE¹

Amici curiae are a coalition of state and local officials, state legislators, labor unions, and business interests: Governor Bob Ferguson; Treasurer Mike Pellicciotti; State Senate Majority Leader Jamie Pedersen, Deputy Majority Leader Manka Dhingra, and Senators Noel Frame, Marko Lillas, June Robinson, Jesse Salomon, Derek Stanford, and Javier Valdez; State House Majority Leader Joe Fitzgibbon and State House Speaker Pro Tempore Chris Stearns; Seattle Mayor Bruce Harrell; Spokane Mayor Lisa Jo Brown; the Washington Economic Development Association; the Economic Alliance of Snohomish County; the Economic Development Alliance of Skagit County; the Cowlitz Economic Development Council; the International Association of Machinists and Aerospace Workers District 751; Iron Workers Union Local 86; Sheet Metal, Air, Rail & Transportation (SMART) Northwest Regional Council Local 66; Society of Professional Engineering Employees in Aerospace (SPEEA), IFPTE Local 2001; Teamsters Local 117; the Greater Everett Chamber of Commerce; Susan Yirku, Executive Director, Pacific County Economic Development Council; Man Wang, Executive Director, Washington State China Relations Council; and North Cascades Builders Supply (collectively, the “Washington State Amici”).

The Washington State Amici represent a wide variety of public and private interests within the State of Washington that have borne the consequences of President Trump’s unlawful tariffs and disregard for

¹ No counsel for any party authored this brief, in whole or in part. No person or entity other than amici curiae contributed monetarily to its preparation or submission.

separation of powers principles: increased costs for consumers, supply chain disruptions, and lost revenues across industries. The Washington State Amici strongly believe that permitting the Administration to impose sweeping tariffs under IEEPA would undermine the bedrock principles of separation of powers upon which this country was founded.

As a leader in global and national trade, Washington has disproportionately borne the economic costs associated with President Trump's tariff regime. In the few short months since their implementation, these tariffs have undermined the state's economic well-being and severely disrupted key sectors of Washington's economy, including agriculture, manufacturing, and technology, resulting in higher costs for consumers and businesses, and reduced competitiveness in global markets. The constraints on trade in Washington imposed by the tariffs in turn increase economic pressure on key state industries, lead to job losses and wage cuts, disrupt supply chains, and reduce market competition. The outcome of this case will materially affect Washington's economic interests and the interests of the Washington State Amici.

The Washington State Amici submit this brief to emphasize the irreparable harm caused across a variety of sectors in Washington by the President's unlawful, arbitrary, and ever-changing tariff policy, and in support of Respondents.

SUMMARY OF ARGUMENT

Our Constitution establishes a carefully balanced system of government, reserving specific

powers to “the States respectively, or to the people.” U.S. CONST. art. X. This division is fundamental to preserving both the rights of the States and the principles of representative democracy that allow citizens to hold their government accountable. When a particular branch claims authority beyond that granted by the Constitution, it disrupts this balance and threatens our democratic system. Such overreach infringes on states’ rights and circumvents decades-old constitutional feedback mechanisms. This Court must serve as the backstop against executive overreach and protect the separation of powers that safeguards our fundamental liberties.

The International Emergency Economic Powers Act (“IEEPA”) permits the President to “investigate, regulate, or prohibit” aspects of international trade, including “any transactions in foreign exchange.” 50 U.S.C. § 1702(a)(1)(A). But these powers “may only be exercised to deal with an *unusual and extraordinary* threat” for which a “national emergency” has been declared and “may not be used for any other purpose.” 50 U.S.C. § 1701(b) (emphasis added). IEEPA’s grant of presidential authority to “regulate” imports cannot be read to authorize the varying tariffs imposed by President Trump’s Executive Orders, or any imposition of tariffs by a President at all.

Only Congress, not the President, has the power to “lay and collect Taxes, Duties, Imposts and Excises,” and Congress cannot delegate those powers to the President. U.S. Const., Art. I, § 8, cl. 1. The President’s exercise of power here is either outside the scope of the power granted to him by Congress through IEEPA or IEEPA is an unconstitutional

delegation of power reserved exclusively to the legislative branch. In either case, the decisions of the Court of International Trade and the Federal Circuit striking down the President's tariffs should be affirmed.

ARGUMENT

I. IEEPA Must Be Interpreted Narrowly to Respect Separation of Powers Principles.

IEEPA does not clearly authorize President Trump's tariffs, if it can be read to authorize tariffs at all. Only in a declared national emergency does IEEPA permit the President to "regulate" the "importation of ... any property in which any foreign country or a national thereof has any interest by any person." 50 U.S.C. § 1702(a)(1)(A), (B). This Court should reject petitioners' argument that "regulate" can be interpreted as including the power to impose tariffs. The authority to "regulate" does not imply an authority to impose tariffs. The power to "regulate" has long been understood to be distinct from the power to "tax." *See, e.g.*, U.S. CONST. art. I, § 8 cl. 1, 3 (power to tax and power to regulate commerce vested in Congress separately).

Petitioners' interpretation of "regulate" would open the floodgates for the President to exercise boundless power in imposing tariffs on the American people whenever he wants, at whatever rates he wants, on whichever countries he wants, and for as long as he wants, simply by declaring a trade deficit to be a national "emergency." But petitioners cannot point to a single other statute in which "regulate" can be read as authorizing taxes or tariffs. Here, the plain language of IEEPA does not authorize the President to impose tariffs or levy taxes.

If IEEPA were interpreted as petitioners urge, the statute would constitute an unconstitutional delegation of congressional power in violation of this Court's nondelegation doctrine. Just recently, the Court upheld a statute permitting the executive to impose "contributions" (*i.e.*, taxes) against a nondelegation challenge because the statute set a "ceiling" and a "floor" on the tax rates. *FCC v. Consumers' Research*, 606 U.S. ----, 145 S. Ct. 2482, 2502 (2025). IEEPA has no such guardrails. When Congress delegates broad authority without clear standards, it invites executive overreach, reduces transparency, and introduces real harms to states and their citizens.

II. The Nondelegation Doctrine Preserves Separation of Powers and Prevents Arbitrary Governance.

"The Constitution promises that only the people's elected representatives may adopt new federal laws restricting liberty." *Gundy v. United States*, 588 U.S. 128, 149 (2019) (Gorsuch, J., dissenting). Endowing "a single executive branch official" to write laws and set policies restricting the liberty of the American people scrambles the design of government that the Framers of our Constitution created. *See id.* "There can be no liberty where the legislative and executive powers are united in the same person, or body of magistrates." The Federalist No. 47, at 302 (Madison) (internal quotations omitted).

Article I of the Constitution provides that "[a]ll legislative Powers herein granted shall be vested in a Congress of the United States." § 1. This vesting of legislative power in Congress alone reflects the

central judgment of the Framers of our Constitution that “the separation of governmental powers into three coordinate Branches is essential to the preservation of liberty.” *Mistretta v. United States*, 488 U.S. 361, 380 (1989). The Court’s nondelegation doctrine “is rooted in the principle of separation of powers that underlies our tripartite system of Government.” *Id.* A key function of the nondelegation doctrine is to “ensure[] to the extent consistent with orderly governmental administration that important choices of social policy are made by Congress, the branch of our Government most responsive to the popular will.” *Industrial Union Dept., AFL-CIO v. American Petroleum Inst.*, 448 U.S. 607, 685 (1980) (Rehnquist, J., concurring).

This core principle of American government exists to prevent the dangers of arbitrary rule and concentrated power in one branch of government. Together, the principles of separation of powers and of nondelegation “safeguard[] a structure designed to protect [our] liberties, minority rights, fair notice, and the rule of law.” *Gundy*, 588 U.S. at 156 (Gorsuch, J., dissenting). The importance of separated powers as a safeguard of liberty was not simply part of a set of considerations that the Framers acknowledged. See Ronald A. Cass, *Delegation Reconsidered: A Delegation Doctrine for the Modern Administrative State*, 40 HARV. J.L. & PUB. POL’Y 147, 152 (2017). Rather, the Framers repeatedly stressed—Madison most of all—the centrality of separated powers to a proper foundation for the nation. *Id.*

The courts play a key role in the tripartite system and have an obligation to police nondelegation questions like the one presented here. Without enforceable limits, and without oversight from the

courts, Congress can—and increasingly does—cede sweeping policymaking discretion to the executive, eroding the Constitution’s structural protections.

III. Meaningful Limits on Delegation Safeguard Political Accountability and Democratic Governance.

In a functioning democracy, major policy choices, particularly those that have broad economic impacts on states, must be made by officials who are electorally accountable. *See, e.g., Mistretta*, 488 U.S. at 415 (Scalia, J., dissenting) (“Except in a few areas constitutionally committed to the Executive Branch, the basic policy decisions governing society are to be made by the Legislature.”). Delegation without standards allows Congress to avoid difficult decisions while insulating itself from the political consequences.

Clear limits on congressional delegation to other branches are particularly important in the arena of trade policy. Hasty decisions by an executive branch can quickly and easily lead to nationwide economic instability, leaving citizens unable to hold that executive official accountable. Trade policy was never supposed to be based on presidential predilection. On the contrary, the Framers knew that tariffs would affect each state in different ways, so they entrusted the tariff power to a deliberative body that represented the interests of a diverse coalition of states. Cameron Silverberg, *Trading Power: Tariffs and the Nondelegation Doctrine*, 73 STANFORD L. REV. 1289, 1292 (2021); *see also* Timothy Meyer & Ganesh Sitaraman, *Trade and the Separation of Powers*, 107 CALIF. L. REV. 583, 590–92, 629–34 (2019). That is why Article I specifically states that “*Congress* shall have Power To lay and collect Taxes, Duties, Imposts and Excises ... [and] To regulate Commerce with

foreign Nations.” U.S. CONST. art. I, § 8, cls. 1, 3 (emphasis added). Thus, the Framers provided that states—through their duly elected representatives—have a voice in the formulation of tariff policy that directly impacts their economies.

To prevent tyranny and maintain the separation of powers, the Court should revisit its current application of the nondelegation doctrine, particularly in the face of a chief executive who acts with widespread disregard for the role given to Congress by the Constitution. Though this case is a prime example of the President’s disregard for Congressional restraints on executive branch power, other examples abound from the President’s first term. For example, in February 2019, after Congress refused to allocate the funds the president wanted to construct his promised wall along the United States-Mexico border, the president declared a national emergency for no other reason than to bypass Congress and obtain the funds to begin construction.² The president acknowledged that the situation did not constitute a genuine emergency and admitted that he declared a national emergency solely to circumvent constitutional authority.³ This case presents a frighteningly similar set of facts.

The nondelegation doctrine also serves another vital function: promotion of democratic accountability. Enforcement of the doctrine requires Congress, the

² Peter Baker, *Trump Declares a National Emergency, and Provokes a Constitutional Clash*, N.Y. TIMES (Feb. 15, 2019), <https://www.nytimes.com/2019/02/15/us/politics/national-emergency-trump.html> [perma.cc/V2BB-EQ6Z].

³ *Id.* (“I didn’t need to do this [declare a national emergency], but I’d rather do it much faster ... I just want to get it done faster, that’s all.”).

only branch elected directly by the voting public, to make fundamental policy decisions and prevents Congress from avoiding its constitutionally dictated lawmaking function by passing off these decisions to the chief executive, whom the American people can only hold accountable indirectly every four years. See Martin H. Redish, *Pragmatic Formalism, Separation of Powers, and the Need to Revisit the Nondelegation Doctrine*, 51 LOY. U. CHI. L. J. 363, 369 (2020). When the executive branch effectively legislates, the people cannot meaningfully influence policy through the ballot box. See *Gundy*, 588 U.S. at 155 (Gorsuch, J., dissenting) (“And by directing that legislating be done only by elected representatives in a public process, the Constitution sought to ensure that the lines of accountability would be clear: The sovereign people would know, without ambiguity, whom to hold accountable for the laws they would have to follow.”).

IV. Unchecked Delegation Disrupts Federalism and Imposes Concrete Harms on Washington State Amici.

Washington State is not a mere administrative unit of the federal government; it is a sovereign entity entitled to a stable and predictable federal framework. When the President legislates tariffs based on vague congressional delegations or no delegation at all, the states must absorb the consequences without input or recourse. This is not what our Framers intended.

As a trade-intensive state, Washington is particularly exposed to both the direct effects of the President’s brash decision to levy tariffs (and repeatedly change them without notice or congressional input) and the likely retaliatory responses from Washington’s key trading partners.

Among other harms, key impacts of the President's tariffs on Washington State include higher consumer prices, considerable employment losses, significantly declining state and local revenues in response to reduced economic activity, and slowed economic growth as a result of reduced trade activity and rising production costs.

Washington is the ninth-largest state exporter of goods in the country, and its economy is suffering—and will continue to suffer—disproportionate harm from President Trump's reckless and unprecedented tariffs. If allowed to remain in effect, the President's tariffs will continue to wreak havoc on Washington-based interests by disrupting established supply chains, forcing businesses and consumers to pay more for goods, equipment, and services, and interfering with the Governor's ability to shape and implement a state budget and pursue state policy priorities amid the significant uncertainty, chaos, and adverse economic conditions caused by the tariffs. The State Treasurer has identified that the economic and budgetary harms due to these tariffs have already triggered a negative impact to the state's credit outlook. Washington businesses are experiencing severe disruptions, including halting plans to hire or expand due to increased uncertainty, the loss of existing and new market opportunities for export goods, and higher prices for necessary inputs that depress demand and threaten revenues.

The impact of the President's tariffs on Washington industries, employment, and state revenue are most shocking. If the President's tariffs are permitted to remain in place, Washington's economy is projected to suffer a net loss of *\$8.1 billion*

in output sales between 2025 and 2029.⁴ Nearly 32,000 jobs are projected to be lost by Washington workers across all industries, covering over 50 sectors of the state's economy. *Id.* at 24. The total projected labor income loss across the state is \$1.34 billion, led by aircraft and parts manufacturing (-\$1.92 billion), food, beverage, and tobacco manufacturing (-\$1.02 billion), and crop production (-\$974 million). *Id.* at 26. Each of these sectors is heavily trade-exposed and will suffer both direct export revenue losses and domestic demand contraction.

The President's tariffs have far-reaching implications outside of foreign commerce, too. Several service industries in Washington are also indirectly impacted by the tariffs, including ambulatory health care services (-\$57 million), arts, recreation, and accommodation (-\$93 million), educational services (-\$23 million), and hospitals (-\$35 million). *Id.* These reductions across important primary industries illustrate how the President's tariff war, while initially targeting traded goods, has and will have far-reaching effects across the broader state economy.

Indicative of Washington's economic downturn is the significant decline in the state's shipping cargo volumes in the face of the President's tariffs. In an early September 2025 report, the Northwest Seaport Alliance showed double-digit percentage drops across international imports, truck transactions, and vessel

⁴ Washington State Office of Financial Management (OFM), *Crosswinds Ahead: The Turbulent Tariff Toll on Washingtonians* (2025), https://ofm.wa.gov/sites/default/files/public/dataresearch/economy/Tariff_Impact_Analysis_Report.pdf. This OFM report is based on the tariffs proposed on April 9, 2025. With the tariff proposals changing frequently, the actual impacts may vary.

lifts. International imports have seen the steepest declines, plunging by nearly 40% compared to the weekly average in September 2024. While a single week or month's data can be volatile, the numbers reflect a broader trend of reduced activity in 2025.⁵

Should the President's tariffs remain in place, Washingtonians will see higher prices for food (16% higher cumulatively over two years); higher prices for clothes and shoes (around 7% in the next year); and higher prices for cars (a 20–25% rise for used cars over two years and a 6% rise for new cars). Washington will also see tens of thousands of jobs put at risk, with agriculture, food processing, and aerospace being the hardest hit industries. Based on modeling from the State's Office of Financial Management, weaker sales and business activity as a result of the tariffs could lead to a loss of \$2.2 *billion* in general fund revenue to the state by 2029. Quarterly state GDP growth is also expected to slow by 1.2 to 1.8 percentage points through 2029.

These ongoing harms to the Washington State Amici underscore why meaningful legislative boundaries matter—not just for constitutional theory, but for day-to-day governance.

CONCLUSION

This case presents an opportunity for the Court to restore meaningful limits on legislative delegation and to reassert the foundational principles of democratic governance. For the foregoing reasons,

⁵ The Northwest Seaport Alliance, *Weekly NWSA Volumes & Metrics Report*, <https://www.nwseaportalliance.com/cargo-operations/weekly-nwsa-volumes-metrics-report> (last visited Oct. 8, 2025).

the Court should rule for Respondents and affirm the Federal Circuit's decision.

Respectfully submitted,

STEVEN W. FOGG
CORR CRONIN LLP
1015 Second Avenue, Floor 10
Seattle, WA 98104
(206) 625-8600
sfogg@corrchronin.com

*Counsel for Washington State
Amici Curiae*