
LEARNING RESOURCES, INC. v. TRUMP

Nos. 24-1287 & 25-250

BARRETT, J., concurring

I join the Court's opinion in full. The Chief Justice correctly concludes that the International Emergency Economic Powers Act does not authorize the President to impose the sweeping tariffs at issue here. The statute's text, structure, and history all point in the same direction: Congress did not clearly delegate to the President the power to restructure American trade policy through open-ended tariff impositions. I write separately to emphasize two points about the limits of this holding and the constitutional backdrop against which we interpret statutes delegating emergency authority to the Executive.

I

First, a word about what today's decision does not hold. We do not cast doubt on IEEPA's core authorities, which remain robust and essential tools for addressing genuine foreign emergencies. The President retains full power under IEEPA to freeze foreign assets, block financial transactions with hostile actors, prohibit categories of trade with nations that threaten our security, and impose embargoes in response to international crises. *See* 50 U.S.C.

§ 1702(a)(1)(B). These are precisely the kinds of targeted sanctions that Congress intended when it enacted IEEPA in 1977 to "revise and delimit" presidential emergency powers following decades of expanding executive assertions under the Trading with the Enemy Act. H.R. Rep. No. 95-459, at 2 (1977).

Nor do we suggest that economic concerns can never justify emergency action. Congress has provided specific statutory authorities for the President to address trade-related threats—Section 232 for national security threats from imports, Section 122 for balance-of-payments emergencies, Section 301 for unfair trade practices. These carefully calibrated statutes reflect Congress's judgment about when and how the President may adjust tariffs in response to particular economic circumstances. What Congress has not done is grant the President a roving commission to redesign the entire tariff structure whenever he concludes that chronic trade deficits constitute an "unusual and extraordinary threat."

Today's holding is thus quite narrow: IEEPA does not authorize across-the-board tariffs of indefinite duration premised on longstanding trade grievances. This conclusion follows from ordinary principles of statutory interpretation, reinforced by the major questions doctrine.

II

Second, I write to underscore the separation-of-powers principles that inform our interpretation of statutes conferring emergency authority on the President—principles that are especially relevant when the asserted emergency power encroaches on core legislative functions.

A

The Constitution's allocation of the tariff power to Congress reflects a deliberate structural choice. Article I vests in Congress both the power to "lay and collect Taxes, Duties, Imposts and Excises," U.S. Const. art. I, § 8, cl. 1, and the power to "regulate Commerce with foreign Nations," *id.*, cl. 3. The Founders separately enumerated these powers because they understood that tariffs—unlike pure sanctions—are taxes imposed on Americans. They fall on domestic importers and, ultimately, consumers. The decision whether to impose such taxes, and at what rates, is therefore a quintessentially legislative judgment requiring "taxation with representation"—the very principle for which the Revolution was fought.

As I have previously explained, when the Constitution commits a particular power to a specific branch, "the default rule is that the power is nondelegable." Amy Coney Barrett, *Suspension and Delegation*, 99 Cornell L. Rev. 251, 260 (2014). That does not mean the power can never be delegated; rather, it means that "the nondelegation doctrine should operate with special force" in such contexts. *Id.* at 261. The power to tax through tariffs is one of those core legislative powers, and any delegation must be "expressly authorized by statute and carefully circumscribed." *Id.* at 263.

History confirms this understanding. From the Founding through the early twentieth century, Congress jealously guarded its tariff authority, setting rates through detailed legislation and limiting presidential discretion to narrow adjustments within congressionally prescribed bounds. When Congress later delegated tariff-negotiating authority to facilitate reciprocal trade agreements, it did so explicitly and with substantial procedural safeguards. The Trade

Act of 1974, enacted after President Nixon's controversial 1971 surcharge, tightened those limits even further—requiring congressional approval of trade agreements and imposing strict temporal and substantive constraints on emergency tariff actions.

B

This constitutional backdrop matters for statutory interpretation. When Congress enacts statutes conferring emergency powers on the President, we must read them against the structure the Constitution establishes. Where statutory language is ambiguous, we should not lightly conclude that Congress meant to authorize the Executive to exercise powers the Constitution vests in the Legislature—particularly when Congress has elsewhere enacted specific, limited delegations addressing the same subject matter.

This principle finds expression in the major questions doctrine, which requires clear congressional authorization before agencies (or the Executive) may claim the power to make decisions of "vast 'economic and political significance.'" *West Virginia* v. *EPA*, 597 U.S. 697, 724 (2022) (quoting *Utility Air Regulatory Group* v. *EPA*, 573 U.S. 302, 324 (2014)). As I explained in my concurrence in that case, the doctrine "has deep roots" in principles of constitutional structure. *Id.* at 766 (Barrett, J., concurring). "Perhaps the most basic of those principles . . . is that federal authority is limited and enumerated." *Ibid.* When an agency claims authority to regulate in ways that intrude on state sovereignty or transform vast swaths of the economy, we insist on clear statutory authorization because we will not presume Congress meant to fundamentally alter the constitutional balance. *Id.* at 767–768.

The same principle applies when the Executive claims authority to exercise powers the Constitution assigns to Congress. Here, the President asserts IEEPA authorizes him to restructure American trade policy—to abandon the century-old principle of nondiscrimination among trading partners, to impose indefinite tariffs reaching into the trillions of dollars, and to do so based on his unilateral determination that chronic economic conditions constitute an emergency. This assertion dramatically expands executive power at Congress's expense. It effectively allows the President to set the nation's trade policy without fresh legislative authorization—something the Constitution does not permit absent clear congressional delegation.

C

The major questions doctrine asks whether Congress has clearly authorized the asserted power. In applying that inquiry here, three structural considerations are decisive.

First, Congress has created a comprehensive statutory framework governing presidential tariff authority. When it wishes to delegate such authority, Congress speaks explicitly—as it did in Section 232 (authorizing tariff adjustments to protect national security), Section 122 (authorizing temporary surcharges for balance-of-payments emergencies, capped at 15% and 150 days), and Section 301 (authorizing duties to combat unfair trade practices).

Each delegation includes specific findings requirements, procedural safeguards, temporal limits, or substantive constraints. Against this backdrop of express, limited delegations, we cannot infer that Congress tucked sweeping, unconstrained tariff authority into IEEPA's general language about "regulat[ing]" "importation." 50 U.S.C. § 1702(a)(1)(B).

Second, the structural canon counsels against reading IEEPA to render these carefully tailored trade statutes superfluous. If IEEPA already authorized unlimited presidential tariffs in response to any economic threat, Congress's enactment of Section 122 three years earlier—with its tight constraints—would make no sense. "[W]e must interpret statutes as a harmonious whole," *National Assn. of Mfrs.* v. *Department of Defense*, 583 U.S. 109, 127 (2018), and the harmonious reading is that IEEPA authorizes sanctions (asset freezes, transaction prohibitions, embargoes) while the trade statutes govern tariffs.

Third, constitutional avoidance reinforces this interpretation. Reading IEEPA to authorize open-ended tariffs based on the President's determination that trade deficits constitute an "unusual and extraordinary threat" would raise serious nondelegation concerns. Section 1701(a)'s standard provides no guidance on which products to tax, at what rates, for what duration, or based on what criteria. The government's theory would permit any President to characterize any economic dissatisfaction as an emergency justifying unilateral tariff restructuring—essentially

delegating Congress's Article I taxing power without any meaningful intelligible principle. We avoid such constitutional doubts by reading the statute not to reach so far. *See Edward J. DeBartolo Corp.* v. *Florida Gulf Coast Building & Constr. Trades Council*, 485 U.S. 568, 575 (1988).

III

One final observation about emergencies and congressional power. The government urges that exigency justifies broad presidential authority here. But urgency cannot override structure. As I explained in my scholarship, even where the Constitution itself contemplates emergency action—as with the Suspension Clause—it "does not give the President carte blanche." Barrett, **Suspension and Delegation**, 99 Cornell L. Rev. at 255. Rather, the Constitution requires that Congress itself make the threshold determination that the emergency conditions exist before the President may exercise extraordinary authority. *See id.* at 265–270. "The Constitution's provision for suspension makes clear that certain fundamental rights may not be abrogated even in times of exigency *unless Congress so decides*." **Id.** at 270 (emphasis added).

The same principle applies to statutory delegations. Congress may certainly grant the President emergency powers—indeed, it has done so in IEEPA and numerous other statutes. But those delegations must respect constitutional structure, particularly when they implicate powers the Constitution assigns to Congress. And when Congress enacts detailed statutory schemes governing how the President may exercise such authority in specified circumstances, we will not presume it simultaneously granted general, unconstrained authority through vague statutory language enacted for different purposes.

The government points to decades of presidential practice, suggesting settled expectations support its reading. But "[p]ast practice does not, by itself, create power." **Medellín v. Texas**, 552 U.S. 491, 532 (2008). And in any event, the "practice" here cuts the other way: No President invoked IEEPA to impose broad-based tariffs in the nearly 50 years between the statute's enactment and this case. That silence speaks volumes.

IV

In sum: Congress has not clearly authorized the President to wield IEEPA as a general tariff statute. The major questions doctrine and constitutional structure both counsel against inferring such authority from language that does not mention tariffs, in a statute designed for different purposes, when Congress has enacted specific, constrained trade authorities addressing the precise circumstances the President now invokes.

These structural principles do more than resolve this case. They preserve the constitutional allocation of powers that protects liberty through separated powers. "Liberty is always at stake when one or more of the branches seek to transgress the separation of powers." **Clinton v. City of New York**, 524 U.S. 417, 450 (1998) (Kennedy, J., concurring). The power to tax—including through tariffs—is one the Constitution vests in Congress precisely to ensure democratic accountability for decisions that burden the people. We may not permit that fundamental safeguard to be bypassed through elastic interpretation of emergency statutes.

I therefore join the Court's opinion holding that IEEPA does not authorize these tariffs.