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NCLA Amicus Brief Asks Supreme Court to Hear Tariffs Case to Revise Its Standard for Delegation-Doctrine Claims

American Institute for International Steel, Inc. v. U.S.

Washington, DC (April 27, 2020) – The New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, today filed an [*amicus curiae*](#) brief in support of the American Institute for International Steel, Inc. AIIS has filed a petition seeking a Writ of Certiorari from the U.S. Supreme Court in *American Inst. for International Steel, Inc. v. U.S.*, claiming that a tariff law improperly divests legislative power from Congress to the President—NCLA agrees.

Section 232 of the Trade Expansion Act of 1962, as amended, 18 U.S.C. § 1862, authorizes the President to impose import tariffs that, in the judgment of the President, are needed “so that such imports will not threaten to impair the national security.” The Act defines “national security” (§ 232(d)) in an all-encompassing manner that enables the President to classify the import of *any* article as an impairment of national security—and thereby delegates to the Executive Branch unchecked legislative authority to increase tariffs on imports.

Invoking his authority under the statute, President Trump in March 2018 imposed a 25% tariff on all imported steel articles from all countries except Canada and Mexico. NCLA believes that the statute constitutes an improper delegation of legislative authority in violation of the “Vesting Clause” of Article I, § 1 of the U.S. Constitution, which states that all legislative power resides with Congress.

A three-judge panel in the U.S. Court of International Trade rejected AIIS’s challenge to the tariff. Rather than conducting its own independent review of the statute’s constitutionality, the court held that it was “bound by *Algonquin*” a 1976 Supreme Court precedent, to reject delegation-doctrine challenges to section 232. NCLA’s brief asks the Court to review and consider overruling the 1976 decision and to strike down the statute as an unconstitutional delegation of legislative power.

Five Supreme Court justices—including C.J. Roberts and JJ. Thomas, Alito, Gorsuch, and Kavanaugh—have expressed willingness to reconsider the Court’s standards for reviewing delegation doctrine claims. This case provides the perfect opportunity for the Court to consider abandoning the current review standards it applies to claims arising under the delegation-doctrine. The current test asks whether the challenged statute includes an “intelligible principle” to guide the Executive Branch. NCLA argues that the intelligible-principle standard is way too lax, with the results that the constitutional provision barring delegation of legislative powers has become a dead letter.

NCLA released the following statement:

“We can’t rely on Congress to defend its exclusive right to legislate. All too often, Congress is willing to pass the buck to the Executive Branch in order to avoid having to make politically unpopular decisions. That is why it is so important for the courts to carefully review delegation-doctrine claims. Unless the federal courts are willing to carefully examine claims that Congress has improperly delegated its legislative power, there will be no one to safeguard our constitutional structure.”

—**Rich Samp, Senior Litigation Counsel, NCLA**

ABOUT NCLA

NCLA is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar Philip Hamburger to protect constitutional freedoms from violations by the Administrative State. NCLA’s public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans’ fundamental rights.

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