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Oral Argument over Trump Admin.’s Unlawful Emergency Tariff Orders Bodes Well for Challengers

Learning Resources, Inc. and hand2mind, Inc. v. President Donald J. Trump, et al.;
President Donald J. Trump, et al. v. V.O.S. Selections, Inc., et al.

Washington, DC (November 5, 2025) – Former Acting U.S. Solicitor General Neal Katyal and Oregon Solicitor General Benjamin Gutman delivered oral argument today at the Supreme Court in [Learning Resources v. Trump](#) and [Trump v. V.O.S. Selections](#) challenging the Trump Administration’s International Emergency Economic Powers Act (IEEPA) tariff orders. The New Civil Liberties Alliance filed an *amicus curiae* [brief](#) in these consolidated cases on behalf of itself and its clients in [Simplified v. Trump](#)—the first lawsuit ever brought against the emergency tariff orders—and [FIREDISC v. Trump](#), pointing out that IEEPA does not authorize any tariffs. NCLA looks forward to a ruling that any tariffs imposed solely relying on IEEPA are unlawful, vindicating the plaintiffs in these cases and all other Americans who are paying these tariffs.

As NCLA has argued since it filed *Simplified*, IEEPA never mentions tariffs, so it cannot possibly authorize the President to enact them—even in declared emergencies. Katyal explained that tariffs are taxes, and our Founders gave the taxing power to Congress alone, and no president has previously tried to impose tariffs using IEEPA.

“It’s simply implausible that in enacting IEEPA, Congress handed the president the power to overhaul the entire tariff system and the American economy in the process, allowing him to set and reset tariffs on any and every product from any and every country at any and all times,” he observed. “And as Justices Gorsuch and Barrett just said, this is a one-way ratchet. We will never get this power back if the government wins this case.”

The Administration’s attempt to use IEEPA this way also runs afoul of the Court’s Major Questions Doctrine, which tells courts not to discern policies of “vast economic and political significance” in a law lacking explicit congressional authorization. If IEEPA were held to permit these tariffs, it would violate the Nondelegation Doctrine because the statute lacks an “intelligible principle” to limit or guide the president’s tariff decisions. Or as Justice Elena Kagan put it at oral argument, the IEEPA tariffs have no ‘ceiling.’

Representing the government, U.S. Solicitor General John Sauer argued that the emergency tariffs are not taxes, but rather are regulatory tariffs, arguing that the Major Questions Doctrine does not apply where the president’s foreign policy powers implicate his inherent Article II authority and Congress has broadly delegated tariff power.

“It’s a Congressional power, not a presidential power, to tax,” Justice Sonia Sotomayor pushed back. “You want to say tariffs are not taxes, but that’s exactly what they are. They’re generating money from American citizens, revenue. And you say its incidental to the regulatory purpose. But I don’t see how a quota is equivalent to revenue raising. A quota sets a limit to what you can import in, but it doesn’t generate revenue. I don’t understand this argument, that it’s equivalent, or that foreign powers, or even an emergency, can do away with the Major Questions Doctrine.”

Just yesterday, NCLA took the important step of filing the first [class-action lawsuit](#) against the IEEPA tariffs. NCLA will ask the U.S. District Court for the District of Columbia to certify one or more class(es) in that case, declare the tariffs unlawful and unconstitutional, and set aside the orders that imposed them, liberating its clients and all similarly situated companies and individuals nationwide from having to pay them any longer.

NCLA released the following statements:

“The questions showed there are no good answers supporting the Administration’s effort to rely on IEEPA for its tariffs. The Court should hold that IEEPA does not authorize any tariffs at all.”

— **Andrew Morris, Senior Litigation Counsel, NCLA**

“The Court was fully aware that shifting the Article I power to tariff to the Article II Presidency forever, given the need to take it back by supermajority, would be a grave step.”

— **John Vecchione, Senior Litigation Counsel, NCLA**

“Solicitor General Sauer kept saying the tariffs would work best if no one paid them. Not so. If our clients did not pay the tariffs, the administration would not applaud that. What this claim gives away is that the tariffs would work best if they successfully coerced the American people not to buy products made overseas. But, of course, that means the effect of the tariffs is on domestic consumer behavior—not on foreign countries. And that is another reason why the president cannot impose tariffs unilaterally. Congress must pass a law to tax Americans.”

— **Mark Chenoweth, President, NCLA**

For more information visit the *amicus* pages [here](#) and [here](#).

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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