No. 25-1012

In the
Supreme Court of the United States

HMTX INDUSTRIES, LLP, ET AL.,

Petitioners,

v.

UNITED STATES OF AMERICA, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals For the Federal Circuit

---

BRIEF AMICUS CURIAE OF CONSUMER WATCHDOG IN SUPPORT OF PETITIONERS

Alan B. Morrison
Counsel of Record
George Washington University
Law School
2000 H Street NW
Washington D.C. 20052
202 994 7120
abmorrison@law.gwu.edu
Additional Counsel on Inside Cover

March 26, 2026

Harvey Rosenfield
William Pletcher
Benjamin Powell
Ryan Mellino
CONSUMER WATCHDOG
6330 San Vicente Blvd. Ste. 250
Los Angeles, CA 90048
310 392 0522

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

Constitutional Provisions

Statutes

INTEREST OF THE AMICI CURIAE[1]

The amicus curiae Consumer Watchdog is a non-profit, non-partisan public interest organization dedicated to protecting consumers from economic harm caused by unfair market practices, corporate abuses, and improper governmental actions. Consumer Watchdog has a special interest in this case because the challenged tariffs function as a regressive tax that disproportionately burdens working families and economically vulnerable consumers. Tariffs of the magnitude at issue here inevitably raise consumer prices and threaten the economic security of working families and small businesses.

Amicus submits this brief to address two issues that may assist the Court's consideration of the petition. First, amicus explains the relevance of this Court's decision in *Learning Resources, LLP v. Trump,* 146 S. Ct. 628 (2026), which was decided the same day that the petition in this case was filed and therefore was not addressed in the petition. That decision bears directly on the scope of executive authority to impose tariffs under statutes that delegate trade powers to the President. Amicus filed a brief in support of the challengers to the tariffs in the *Learning Resources* cases.

---

[1] Pursuant to Rule 37.6, amicus states that no party, counsel for any party, or any person other than amicus and its counsel authored this brief or made any monetary contribution for its preparation or submission. Counsel certify, pursuant to Rule 37.2, that they notified counsel for respondents of their intention to file this brief more than ten days before respondents' opposition was due.

Second, amicus address the constitutional implications of the Federal Circuit's conclusion that the Executive may "modify" previously imposed tariffs by increasing them by a factor of ten. If the statute is interpreted to confer such sweeping authority, it raises serious questions under the nondelegation doctrine. In particular, amicus discusses this Court's recent decision in *Federal Communications Commission v. Consumers' Research*, 606 U.S. 656 (2025), which was decided after the case below was argued and therefore was not considered by the Court of Appeals.

INTRODUCTION AND SUMMARY OF ARGUMENT

The issue in this case is the legality of the "modification" by respondent United States Trade Representative (USTR) of the 25% tariffs that it previously imposed on $50 billion in imports from China under section 301 of the Trade Act of 1974, 19 U.S.C. § 2411. Those tariffs were based on a finding, required by section 301(b), that China had engaged in "unreasonable or discriminatory" foreign trade practices that "burden or restrict United States commerce." Before imposing those tariffs, USTR was required to and did comply with an elaborate set of procedures, described in the petition at 5-6. The amount of those tariffs was based on a finding that it was "commensurate" with the specific harms to US trade that USTR found were caused by China's trade practices.

Section 301(b) is a discretionary authorization, whereas section 301(a) is a mandatory provision that is triggered by a finding by USTR that a trade practice of a foreign nation "is unjustifiable and burdens or restricts United States commerce," which is quite similar to the basis of an action under section 301(b). Most significantly, subsection 301(a)(3) includes a limitation on the level of these mandatory tariffs that is remarkably similar to the "commensurate" finding made by USTR for the $50 billion in tariffs in this case:

> (3) Any action taken under paragraph (1) to eliminate an act, policy, or practice shall be devised so as to affect goods or services of the foreign country in an amount that is equivalent in value to the burden or restriction being imposed by that country on United States commerce.

Not surprisingly, shortly after USTR imposed these initial section 301(b) tariffs on imports from China, China retaliated by imposing tariffs on $50 billion in goods from the United States. As directed by the President, USTR relied on section 307, 19 U.S.C. § 2417, to "modify" the existing tariffs on $50 billion in imports by expanding the tariffs to cover $550 billion in imports, although USTR subsequently suspended the final $200 billion so that the "modification" was only seven times the original coverage. Like the original tariffs, the rate of the duties was 25%. Notably, for this modification, USTR followed none of the procedures that it was required to use before

ordering the original tariffs, despite the massive increase.

Section 307(a) contains two provisions that USTR claimed were the legal basis of this increase in tariffs. Paragraph (a)(1)(B) enables USTR to modify a prior section 301 tariff if "the burden or restriction on United States commerce of the … practices, that are the subject of such action has increased…." At no time did USTR attempt to quantify any increase, and the Court of Appeals did not rely on this provision. Instead, it found under paragraph (C) that USTR could "modify" the original tariffs sevenfold if the prior action taken under section 301(b) "is no longer appropriate." No other procedures were required, and USTR made no additional findings to support its conclusion.[2]

As the petition demonstrates, USTR and the Federal Circuit erroneously construed section 307 to allow modifications of this magnitude. This brief presents two additional related reasons that support that conclusion. First, this Court's recent ruling in *Learning Resources, supra,* rejected a similar attempt to read another statute, the International Economic Emergency Policy Act, 50 U.S.C. §1702 (IEEPA), to allow the President to impose tariffs with no limits or restrictions on their use. To be sure, the issue there was whether IEEPA allowed the President to issue *any* tariffs at all under that statute, whereas here USTR was

---

[2] Even if the Federal Circuit had upheld the sevenfold increase under paragraph (B), that provision suffers from the same flaw of being unbounded and without statutory limits as applies to paragraph (C) on which the Federal Circuit relied.

surely permitted to modify the existing tariffs; the question is to what degree. Nonetheless, *Learning Resources* is instructive because the Court there focused on the open-ended nature of the Government's reading of the operative language – the same flaw that infects the Government's position here.

Second, reading section 307 as respondents do places no limits on their authority to "modify" existing tariffs to whatever USTR thinks is "appropriate." As so construed, that means that section 307 would violate the constitutional prohibition against excessive delegation of legislative authority from Congress to the executive branch, in violation of Article I, §8, cl 1, which requires Congress to prescribe the limits for the level of tariffs that the executive branch may impose, but section 307 contains none.

For nearly a century, nondelegation challenges have been evaluated by asking whether the statute at issue supplies an "intelligible principle" to guide the agency or the President. *J.W. Hampton, Jr., & Co. v. United States*, 276 U.S. 394, 409 (1928). This Court recently revisited that framework in *Federal Communications Commission v. Consumers' Research,* 145 S. Ct. 2482 (2025). The decision explained that the inquiry turns on several related considerations: first, that "the degree of agency discretion that is acceptable varies according to the scope of the power congressionally conferred"; second, whether Congress has imposed meaningful "boundaries [on the] delegated authority"; and third, whether

Congress has provided "sufficient standards to enable both 'the courts and the public [to] ascertain whether the agency' has followed the law." *Id*. at 2497.

Section 307, as interpreted by the Federal Circuit, satisfies none of these requirements. If the statute authorizes USTR to increase by a factor of seven the previously imposed tariffs without meaningful limiting principles, then it confers precisely the kind of unbounded policymaking discretion that the nondelegation doctrine forbids. The statute can be sustained only if it is construed to require some degree of proportionality between the harm caused by China's retaliatory actions and any resulting modification of the tariffs.

ARGUMENT

THE FEDERAL CIRCUIT ERRED BY READING THE AUTHORIZATION FOR USTR TO "MODIFY" TARIFFS, AS APPROPRIATE, TO INCREASE THEM TO ANY AMOUNT USTR CHOSE.

After completing its investigation into China's allegedly "unreasonable or discriminatory" trade practices that "burden or restrict United States commerce," USTR initially imposed a 25% tariff on approximately $50 billion in Chinese imports, describing that measure as "commensurate" with the harm caused by China's conduct. When China responded with retaliatory tariffs on U.S. exports, USTR dramatically expanded the scope of its action, extending the

same 25% duty to an additional $350 billion in imports.

The Federal Circuit upheld that expansion on the ground that USTR had determined the action to be "appropriate," which the court treated as the only statutory constraint. But that interpretation would permit far more unlimited exercises of power, which cannot be supported under the statute. Under the Federal Circuit's approach, USTR could have imposed tariffs on virtually all Chinese imports, including the $200 billion in goods that were ultimately excluded. The same theory would also allow USTR to increase the duty rate from 25% to 100%, or even higher, whenever the agency deemed such action "appropriate."

For the reasons explained in the petition, that cannot be the correct interpretation of Section 307(a)(1)(C).

The Federal Circuit's error is underscored by this Court's decision in *Learning Resources*. The statute at issue there, the International Emergency Economic Powers Act (IEEPA), 50 U.S.C. § 1702, does not mention tariffs, unlike the tariff authorities set forth in Title 19, including section 301. But the Court's analysis did not turn solely on that textual distinction. Equally important was the Court's concern that, as interpreted by the President, the statute would impose no meaningful limits on the tariffs that could be imposed. As the Court explained, "[o]n this reading … the President is unconstrained by the significant procedural limitations in other tariff

statutes and free to issue a dizzying array of modifications at will." *Learning Resources,* 146 S. Ct. at 640.

At several other places in *Learning Resources,* this Court made observations that demonstrate the error of the Federal Circuit in refusing to confine the reach of section 307(a)(1)(C).

> We have long expressed "reluctan[ce] to read into ambiguous statutory text" extraordinary delegations of Congress's powers. *West Virginia v. EPA*, 597 U.S. 697, 723 (2022). *Id.* at 638.

> And whatever may be said of other powers that implicate foreign affairs, we would not expect Congress to relinquish its tariff power through vague language, or without careful limits. *Id.* at 642.

> 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. *Id.* at 646.

Amicus does not dispute that section 307 authorizes USTR to increase tariffs in response to China's retaliation. But for the same reasons that this Court declined in *Learning Resources* to read IEEPA as granting the President unbounded tariff authority, section 307(a)(1)(C) should not be

interpreted to confer similarly limitless discretion on USTR, which the Federal Circuit allowed to issue a "dizzying array of modifications at will." *Id.* at 640. Instead, it should be read more narrowly so that it is consistent with the rest of section 301. When USTR initially imposed the section 301(b) tariffs, it interpreted the statute to require that the tariffs be "commensurate" with the harm inflicted on United States commerce. The term "appropriate" in section 307 can and should be understood to impose the same proportionality constraint on any subsequent tariff modifications.

As so interpreted, section 307 would avoid the serious nondelegation concerns raised by the Federal Circuit's unbounded reading of the term "appropriate." The parties in *Learning Resources* fully briefed the nondelegation issue in this Court, but the majority did not reach it after concluding that IEEPA did not authorize the President to impose tariffs at all. The Court therefore resolved the case on statutory grounds, consistent with the principle of constitutional avoidance.

The same approach is appropriate here. If section 307 were read to authorize tariff increases of any magnitude whenever USTR deems them "appropriate," the statute would confer precisely the kind of open-ended policymaking discretion this Court has repeatedly cautioned against. But the statute does not require that reading. Construing section 307 to require that responsive tariffs remain proportionate to the harm caused by China's retaliation supplies a meaningful

limiting principle and avoids the constitutional difficulty.

That limiting construction is particularly important in light of this Court's recent decision in *Federal Communications Commission v. Consumers' Research, supra,* which emphasized that delegations of authority must include meaningful boundaries sufficient to guide executive action and permit judicial review. An interpretation allowing tariffs of any magnitude would provide no meaningful constraint on USTR's discretion and no workable standard by which courts or the public could determine whether the statute has been followed. Interpreting section 307 to require proportionality ensures that the delegation operates within intelligible limits and remains tethered to the statute's objective of addressing unfair trade practices that burden United States commerce.

The current test on the delegation question is contained in this Court's decision in *FCC v. Consumers' Research.* First, quoting *Whitman v. American Trucking Ass'ns*, 531 U.S. 457, 475 (2001) the Court stated that "'the degree of agency discretion that is acceptable varies according to the scope of the power congressionally conferred,'" adding that the "'guidance' needed is greater . . . when an agency action will 'affect the entire national economy' than when it addresses a narrow, technical issue (*e.g.*, the definition of 'country [grain] elevators')." 145 S. Ct. at 2497. Given the magnitude of the impact of these tariff modifications, the guidance required must be

quite significant, which cannot be satisfied solely by the adjective "appropriate."

Second, the Court explained that "we have generally assessed whether Congress has made clear both 'the general policy' that the agency must pursue and 'the boundaries of [its] delegated authority.'" *Consumers' Research*, 145 S. Ct. at 2497 (quoting *American Power & Light Co. v. SEC*, 329 U.S. 90, 105 (1946)). The general policies underlying sections 301 and 307 are reasonably clear. When a foreign country adopts unreasonable trade practices that burden United States commerce, USTR may respond with proportionate trade measures under section 301. And if the foreign country retaliates, section 307 authorizes USTR to respond to that retaliation.

The difficulty for respondents lies with the second requirement: statutory boundaries. As interpreted by the Federal Circuit, section 307 contains none. On that reading, USTR may impose tariffs on any volume of imports, at any duty rate, and for any duration the agency considers "appropriate," without any statutory limit or standard constraining that discretion. An interpretation that allows such unbounded authority is inconsistent with this Court's instruction that a valid delegation must include "boundaries of [the] delegated authority" sufficient to constrain executive discretion.

Third, the Court emphasized the importance of judicial review. In assessing delegations of authority, the Court has asked whether Congress has supplied standards sufficient to enable both

"the courts and the public [to] ascertain whether the agency has followed the law." *Consumers' Research*, 145 S. Ct. at 2497 (quoting *Opp Cotton Mills, Inc. v. Administrator of Wage & Hour Div.*, 312 U.S. 126, 144 (1941)).

In *Consumers' Research*, the agency action at issue was fully subject to judicial review. *See* 47 U.S.C. § 402. Here, by contrast, meaningful judicial review is absent. Although jurisdiction theoretically exists under 28 U.S.C. § 1581(i)(1)(B), respondents have argued that the central question—what tariff response is "appropriate"—is committed to the President's discretion. Indeed, respondents have taken the position that "to the extent that plaintiffs challenge the amount and scope of the tariffs that the President directed USTR to impose, that discretionary decision is *unreviewable* presidential action." Brief for Appellees at 15, HMTX Industries, LLC v. United States, No. 2023-1891 (Fed. Cir.) (emphasis added); *see also id.* at 19 (arguing that challenges to the magnitude of the tariffs "target discretionary presidential actions beyond this Court's review"). If that view were correct, courts would have no standards by which to assess the legality of USTR's actions.

As *Consumers' Research* explains, judicial review is not a constitutional requirement *per se*, but rather a means of assuring that there are statutory limits and that they are followed. By doing that, the courts can satisfy themselves that Congress has adhered to the principle behind the nondelegation doctrine: Article I vests the legislative power in Congress and "that assignment

of power to Congress is a bar on its further delegation: Legislative power, we have held, belongs to the legislative branch, and to no other." *Consumers' Research*, 145 S. Ct. at 2496.

In his concurring opinion in *Consumers' Research*, Justice Kavanaugh made the same point about judicial review, quoting from *INS v. Chadha,* 462 U.S. 919, 953-54, n.16 (1983): "'Executive action under legislatively delegated authority . . . is always subject to check by the terms of the legislation that authorized it; and if that authority is exceeded it is open to judicial review as well as the power of Congress to modify or revoke the authority entirely.'" 145 S. Ct at 2513, n.3.[3]

The statute upheld in Consumers' Research illustrates the problem for respondents here. There, the challengers argued that 47 U.S.C. § 254 violated the nondelegation doctrine because it imposed no numerical limit on the amount the FCC could require regulated entities to contribute. *Id.* at 2495. This Court rejected that argument only after conducting a detailed analysis of the statute's numerous conditions and limitations and concluding that Congress had "sufficiently" confined the agency's discretion. *Id.* at 2492.

Section 254 contained the kinds of statutory boundaries that are entirely absent here. As the

---

[3] In his dissent in *Learning Resources,* Justice Kavanaugh concluded that the power to impose tariffs was one that implicates foreign affairs which lessens the application of the nondelegation doctrine, but with this caveat: "To be clear, I am not suggesting that there is no nondelegation doctrine in the foreign affairs realm." 146 S. Ct. at 721.

Court explained, "Congress made clear the parameters of the programs, and the FCC has operated within them." *Id.* at 2505. Because the statute required the Commission to collect only what was necessary to fund universal-service programs, the Court observed that if the FCC "raises much beyond, as if it raises much below, it violates the statute." *Id.* at 2502. It was those combined limits that assured that meaningful judicial review would be available.

Section 307 contains no comparable constraints. If "appropriate" means what respondents and the Federal Circuit say it means, the statute supplies no standard by which a court could determine whether any tariff increase is lawful.

The importance of meaningful statutory boundaries and judicial review was not disputed by the Government in *Consumers' Research*. To the contrary, the Government acknowledged that the intelligible principle doctrine imposes real limits on the authority that Congress may delegate to the Executive. In its reply brief, the Government emphasized that a valid delegation must identify both a governing "general policy" and statutory boundaries that meaningfully constrain the exercise of delegated authority. Reply Brief of Federal Petitioners at 3, FCC v. Consumers' Research, Nos. 24-354 & 24-422. That understanding reinforces the point here: if section 307 were interpreted to authorize tariff increases of any magnitude whenever USTR deems them "appropriate," the statute would lack the kinds of

limiting principles the Government itself recognized as essential.

The Government was even more specific on the need for statutory limits where the Government is requiring payments, like tariffs, from others. The opening to its reply brief in *Consumers' Research* answered the respondents' charge that the law created "'[u]nbounded' power to levy taxes, subject at most to 'precatory' standards and 'aspirational' principles": "If the Universal Service Fund really worked that way, the government would not defend its constitutionality. *Congress may not vest federal agencies with an unbounded taxing power*." Reply Br. at 1–2 (emphasis added). In response to respondents' allegation that the FCC statute is "too 'hazy' or 'contentless,'" the FCC replied: "Were these provisions contentless, the government would not defend their constitutionality." *Id.* at 11. This was followed by the Government's detailed refutation of the claim that the statute lacks boundaries, in which it pointed to the many specific ways in which the agency's ability to levy assessments was constrained. *Id.* at 12–15.

At oral argument, counsel emphasized this point over and over, referring to various provisions as "a real limit," *Consumers' Research* Transcript of Oral Argument. at 7, and asserting that "we are not arguing for a no limits at all approach where you can just raise whatever revenue we feel like . . . there are qualitative limits that are baked into the statutory scheme, not raise whatever amount of money; you know, a trillion dollars." *Id*. at 8. The Acting Solicitor General did not argue that the

nondelegation doctrine requires rigid lines because "obviously there is a judgment line on how much discretion is too much, but at a minimum Congress is obviously having to provide parameters that you can tell, yes or no, did the agency transgress the boundaries?" *Id.* at 61.

Perhaps most significant of all, the Government recognized the constitutional significance of judicial review in the nondelegation analysis. After reiterating the importance of statutory guidance to the agency, its reply brief stated that "the guidance must be 'sufficiently definite' to permit meaningful judicial review of agency action. *Gundy* [*v. United States*, 588 U.S. 128, 158 (2019)] (Gorsuch, J., dissenting) (quoting *Yakus v. United States*, 321 U.S. 414, 426 (1944))." Reply Br. at 4. And in defending the delegation in the FCC statute, the Government emphasized that "Courts have invalidated FCC action that violates those requirements." *Id.* at 13. As Government counsel explained, "one of the most important" parameters to comply with the nondelegation doctrine asks: 'is there sufficiently definite and precise language in the statute to enable Congress, *the courts,* and the public to ascertain whether Congress's rules are followed?'" Tr. at 22 (emphasis added).

Justice Gorsuch followed up by asking whether judicial review under the FCC statute is "possible," to which counsel replied "Absolutely." *Id.* at 23. Later on, Justice Gorsuch returned to the same point, asking if there was judicial review where a party objected to the use of money as unauthorized by the statute, and the Government's

response was that "would be something that someone could challenge." *Id.* at 42–43. And if someone objected to the way that the FCC is interpreting the statute, "you can bring a challenge to exceeding the scope of the statutory authority." *Id.* at 43.

Meaningful judicial review would be impossible under section 307 if the Federal Circuit's interpretation were correct. To be sure, respondents argue that the statute precludes judicial review altogether. But even if review is available, the statute supplies no standards by which a court could assess USTR's actions. If "appropriate" means whatever USTR believes it to mean, then the agency's discretion is effectively unbounded.

That problem is illustrated by the tariffs at issue here. USTR expanded the tariffs to cover imports valued at roughly seven times the amount of the original duties. But under the Federal Circuit's interpretation, nothing in the statute would have prevented USTR from choosing a multiplier of ten or twenty instead, or from raising the tariff rate to 50, 100, or even 1000 percent. Without statutory boundaries, courts would have no basis on which to determine whether any such escalation complied with the law.

The Government faces an additional difficulty under *Consumers' Research*. The dissent in that case, written by Justice Gorsuch and joined by Justices Thomas and Alito, adopted an even stricter view of the nondelegation doctrine than the majority. Drawing on Justice Gorsuch's earlier

dissent in *Gundy v. United States*, 588 U.S. 128 (2019), the dissent explained that certain core fiscal decisions must remain with Congress itself. In particular, the dissent reasoned that a law authorizing the Executive to impose a tax would violate the nondelegation doctrine unless Congress either "prescribed the tax rate" or "capped the total sum the Executive may collect." *Consumers' Research*, 145 S. Ct. at 2526; *see also id.* at 2532 ("Though the Constitution does not require Congress to make every decision, there are some choices that belong to Congress alone—including setting a tax's rate or, at least, capping receipts."). Section 307, as interpreted by the Federal Circuit, would fail that test as well. The statute would allow USTR to increase tariffs without *any* statutory ceiling on either the rate imposed or the total economic burden imposed on importers.

The dissent then devoted three pages to reviewing the FCC statute in what it eventually concluded was an unsuccessful effort to locate some limitations on the agency's power to tax. That task would be much simplified here as there is not a word of limitation beyond "appropriate", that tells USTR what it must or must not do in response to retaliatory tariffs from another country. If the dissenters in *Consumers' Research* are correct "that there are some abdications of congressional authority . . . that the present majority isn't prepared to stomach," *id.* at 2519, then the claimed delegation to impose retaliatory response tariffs under section 307 is surely one of them.

In their brief below at 43, USTR relied on *Federal. Energy Admin. v. Algonquin SNG, Inc.,* 426 U.S. 548 (1976), to respond to petitioners' argument that respondents' construction of section 307 raised constitutional questions. *Algonquin* is inconsistent with *Consumers' Research*, which did not cite it, and as Justice Gorsuch noted in his concurrence in *Learning Resources,* 146 S. Ct at 668, "whether correctly decided or not, that case lies a far step from this one." Indeed, the question of whether *Algonquin* survives *Consumers' Research* is a further reason to grant the petition in this case.

The importance of this case is underscored by two facts. This case was one of more than 4200 filed in the Court of International Trade on the same issue. Although these cases were filed in 2020, the challenged tariffs remain in effect today. Moreover, on March 11, 2026, USTR announced that it had commenced new section 301 investigations for the following major trading partners with the United States: China, the European Union, Singapore, Switzerland, Norway, Indonesia, Malaysia, Cambodia, Thailand, Korea, Vietnam, Taiwan, Bangladesh, Mexico, Japan, and India. https://ustr.gov/about/policy-offices/press-office/press-releases/2026/march/ustr-initiates-section-301-investigations-relating-structural-excess-capacity-and-production. Thus, the issues raised by the petition in this case may well arise with future section 301 tariffs, as the President

seeks to replicate the tariffs struck down in *Learning Resources*.

CONCLUSION

For the foregoing reasons and those set forth in the petition, the writ should be granted.

Respectfully Submitted

Alan B. Morrison
Counsel of Record
George Washington University
Law School
2000 H Street NW
Washington D. C. 20052
202 994 7120
abmorrison@law.gwu.edu

Harvey Rosenfield
William Pletcher
Benjamin Powell
Ryan Mellino
CONSUMER WATCHDOG
6330 San Vicente Blvd.
Suite 250
Los Angeles, CA 90048

Counsel for the Amicus Curiae

March 26, 2026