THE ORIGINATION CLAUSE AND THE PRESIDENT'S TARIFFS

SUSAN C. MORSE,* SHU-YI OEI & DIANE M. RING*****

ABSTRACT

The President's dramatic use of tariffs has unleashed a host of constitutional and statutory interpretation challenges that promise to make new law. In the leading case, Learning Resources, Inc. v. Trump*, the Supreme Court struck down presidential tariffs. This represents the beginning, not the end, of modern legal developments on the question of the President's authority to impose tariffs.*

In this Article, we examine the role played by the Origination Clause, together with the Taxing Power Clause, in analyzing presidential tariff powers. We argue that while the Origination Clause does not provide a strong constitutional limit on the President's power to impose certain tariffs, the Clause holds significance for statutory interpretation, because only a revenue-raising statute can empower the President to impose revenue-raising tariffs. This contribution fits well with the approach of the Learning Resources *Court, whose decision relied on statutory interpretation.*

Origination Clause case law helps courts identify revenue-raising statutes based on the goal of the legislation and the use of the funds raised. In addition, the legislative process anticipated by the Origination Clause and the Taxing Power Clause demonstrates the Founders' intent that Congress should identify and treat revenue-raising statutes as such. The fewer indicia that Congress considered a statute to be revenue raising when enacting it, the weaker the case for interpreting it as a revenue-raising statute.

The key issue in Learning Resources *was how to interpret the President's authority under the International Emergency Economic Powers Act (IEEPA) to "regulate" "importation" in an "emergency." IEEPA (1) does*

* Mark G. and Judy G. Yudof Chair in Law, University of Texas at Austin School of Law.

** David T. Zhang Professor of Law, Duke University School of Law.

*** Marianne D. Short and Ray Skowyra Professor of Law, Boston College Law School. We are grateful to the *Washington University Law Review*'s Symposium on Taxing, Spending, and the Constitution and to the *Law Review*'s editors for exceptional support and editing on this Article. Thanks also to participants at presentations sponsored by the American Association of Law Schools, the Austin Tax Study Group, Boston University School of Law, Duke University School of Law, Georgetown University School of Law, the National Tax Association, the University of Missouri School of Law, and the University of Texas School of Law. Thank you to Shane Hargrove and Van Tran for excellent research assistance.

not mention tariffs or taxes and would not be considered a revenue-raising statute under Origination Clause case law and (2) contains no congressional process indicators of being a revenue-raising statute. Accordingly, our statutory interpretation analysis supports the Court's conclusion that IEEPA did not authorize the President's 2025 tariffs. It can also support courts' future analyses of presidential tariff authority under other statutes.

TABLE OF CONTENTS

INTRODUCTION

The President's dramatic use of tariffs has unleashed a host of defenses and challenges. The leading case so far is *Learning Resources, Inc. v. Trump*.[1] This decision is the first in which the Supreme Court has held tariffs imposed by the President unlawful. Statutory interpretation provided the core of the Court's reasoning, as it decided that the statute did not delegate to the President the tariff powers that he asserted.[2] The Court did not reach the constitutional challenge—that, even if Congress had broadly delegated

1. *See* Learning Res., Inc. v. Trump, 146 S. Ct. 628 (2026). That case consolidated two cases. *See* V.O.S. Selections, Inc. v. Trump, 149 F.4th 1312 (Fed. Cir.), *aff'g* 772 F. Supp. 3d 1350 (Ct. Int'l Trade), *cert. granted*, 146 S. Ct. 73 (mem.) (2025); Learning Res., Inc. v. Trump, 784 F. Supp. 3d 209 (D.D.C.), *cert. granted before judgment*, 146 S. Ct. 73 (mem.) (2025).

2. *See Learning Res.*, 146 S. Ct. at 646 ("IEEPA does not authorize the President to impose tariffs.").

tariff powers to the President, that grant lacked an intelligible principle and thus violated the nondelegation doctrine.

The taxing provisions of the Constitution—specifically the Taxing Power Clause[3] and the Origination Clause[4]—are at the heart of current tariff debates. These provisions give Congress the power to lay and collect taxes and require that bills for raising revenue must originate in the House. Their existence renders the tariff power an Article I power that Congress may delegate to the President.[5] Accordingly, the tariffs imposed by the President must be consistent with the delegating statute.[6]

What role does the Origination Clause play in analysis of presidential tariff powers? Existing scholarship and litigation documents provide little coverage of this question. We examine it here. We argue, contrary to some suggestions in the literature, that the Origination Clause likely will not provide a strong constitutional limit on the President's power to impose tariffs.

We also argue that the Clause *does* hold significance for the statutory interpretation task that was embraced by the *Learning Resources* Court and that other courts will continue to face as they consider presidential tariff powers in the future. First, the Clause, and case law interpreting it, disfavors permissive readings of statutes as authorizing broad revenue-raising powers. Second, the Clause's existence emphasizes that congressional bills to raise revenue use specific procedures, which were missing from the statutes the President relied upon to impose new tariffs in *Learning Resources*. These untapped arguments may prove helpful in future rounds of litigation regarding presidential tariff powers.

We proceed as follows: In Part I, we describe recent developments in tariff law and policy. In Part II, we explore the historical context of the Origination Clause, its periodic invocation by the House, and its examination by the courts over the years. Our analysis reveals that while the

3. U.S. CONST. art. I, § 8, cl. 1.
4. U.S. CONST. art. I, § 7.
5. *See* Rebecca M. Kysar, *On the Constitutionality of Tax Treaties*, 38 YALE J. INT'L L. 1, 8–9 (2013) (describing the adoption of the Origination Clause); Rebecca M. Kysar, *Is Trump's Tariff Plan Constitutional?*, N.Y. TIMES (Jan. 3, 2017), https://www.nytimes.com/2017/01/03/opinion/is-trumps-tariff-plan-constitutional.html [https://perma.cc/CRD2-ZCUK] (arguing that executive orders imposing tariffs lack support from any independent Article II power and violate the Origination Clause if they do not go through Congress).
6. *See, e.g.*, J.W. Hampton, Jr., & Co. v. United States, 276 U.S. 394, 409 (1928) (upholding tariff statute that contained an "intelligible principle" allowing the President to change rates in response to production costs); *see also* Field v. Clark, 143 U.S. 649, 681–95 (1892) (reviewing previous delegations of embargo and other trade power authorities and upholding tariff statute that prescribed specific results following presidential factfinding regarding the reasonableness of other countries' trade policies).

Origination Clause has shaped congressional norms, it has rarely played a dispositive role in judicial review.

In Part III, we argue that the Origination Clause typically will not provide a strong constitutional constraint on the President's tariff powers. The most obvious Origination Clause challenge—an assertion that a tariff-authorizing statute did not originate in the House—was not available for the tariffs challenged in *Learning Resources* because the underlying statute did originate in the House.[7] Some commentators also identify a different constitutional concern—nondelegation—and suggest that the Origination Clause, in conjunction with the Taxing Power Clause, reduces the ability of Congress to delegate taxing powers.[8] But we also disagree with this notion of a special nondelegation doctrine for tax. Our view is consistent with the Supreme Court's recent *FCC v. Consumers' Research* decision.[9] We also see only limited opportunity for the Origination Clause to function as an effective constitutional constraint through either House enforcement or public action.

In Part IV, we argue that the Origination Clause should, however, affect the statutory interpretation question of whether a law *has* delegated tariff powers to the President. First, Origination Clause case law contains precedent that helps courts identify revenue-raising statutes based on the goal of the legislation and the use of the funds raised. This analysis should apply in interpreting whether a statute in fact delegates power to the President to raise revenues via tariffs.

Second, the process anticipated by the Origination Clause, together with the Taxing Power Clause, demonstrates the Founders' intent that Congress should identify and treat revenue-raising statutes as such, and that whether or not Congress did so should be considered in interpreting a statute. Along those lines, Congress has in fact traditionally employed various procedures in considering and enacting revenue legislation. The fewer indicia that Congress considered a statute to be, and treated it as, revenue raising when enacting it, the weaker the case for interpreting it as a revenue-raising

7. *See* H.R. 7738, 95th Cong. (1977).

8. *See, e.g.*, Jonathan Rosenberg, Comment, *The Origination Clause, the Tax Equity and Fiscal Responsibility Act of 1982, and the Role of the Judiciary*, 78 NW. U. L. REV. 419, 420 (1983) (contending in the context of litigation over the TEFRA Act that "the origination clause is a proscription on congressional power that must be enforced by the judiciary"); Jake Settle, Comment, *Origination and Original Meaning: Reviving the Origination Clause to Restrain the Administrative State*, 31 GEO. MASON L. REV. 697, 716–19 (2024) (arguing that the Origination Clause limits congressional power to delegate revenue-raising authority).

9. FCC v. Consumers' Rsch., 606 U.S. 656, 672–76 (2025) (rejecting any special nondelegation treatment for tax).

statute. This overall statutory interpretation approach holds relevance for analyzing the President's authority to impose tariffs.

Our proposed focus on statutory interpretation aligns with the approach taken in the Supreme Court's *Learning Resources* decision. In *Learning Resources*, the Supreme Court considered not only the *Learning Resources* district court decision[10] but also the Federal Circuit's decision in *V.O.S. Selections, Inc. v. Trump*.[11] *V.O.S. Selections*, which arose in the Court of International Trade as the law requires,[12] was the leading case.

The *Learning Resources* Court affirmed the Federal Circuit's decision, using similar statutory interpretation reasoning. The Court read the statute and interpreted the President's authority under the International Emergency Economic Powers Act (IEEPA) to "regulate" "importation" in an "emergency."[13] The Supreme Court's decision emphasized that IEEPA's text does not mention tariffs or taxes and held that the authority to regulate did not include the authority to tax.[14] The opinion explained that IEEPA's authority to "compel" and "prohibit" is not a greater power that must encompass "tax"; rather, taxes are different, because unlike quotas or embargoes, taxes "raise revenue for the Treasury."[15] The Court also distinguished case law relating to tariffs imposed by presidents under the authority of other statutes,[16] including a unanimous 1976 Court decision upholding a presidential tariff on oil imports[17] and a 1975 federal appellate court decision upholding a temporary across-the-board 10 percent tariff imposed by the President to encourage other countries to adopt floating exchange rates.[18]

Some commentators emphasize a different aspect of the *Learning Resources* case—the major questions doctrine (MQD)—which is said to require clearer statements of legislative intent on matters of greater economic or political significance. But as the case reveals, the Justices are

10. *See* Learning Res., Inc. v. Trump, 784 F. Supp. 3d 209 (D.D.C. 2025), *vacated*, 146 S. Ct. 628 (2026).

11. *See* V.O.S. Selections, Inc. v. Trump, 149 F.4th 1312 (Fed. Cir. 2025), *aff'd sub nom.* Learning Res., Inc. v. Trump, 146 S. Ct. 628 (2026).

12. *See Learning Res.*, 146 S. Ct. at 637 n.1 (holding that the United States District Court for the District of Columbia lacked jurisdiction to hear the case below (citing 28 U.S.C. § 1581(i))).

13. *See* 50 U.S.C. §§ 1701–1702.

14. *See Learning Res.*, 146 S. Ct. at 642–43 (focusing on the list of authorized actions in IEEPA).

15. *See id.* at 644 (rejecting comparisons to other cases including Fed. Energy Admin. v. Algonquin SNG, Inc., 426 U.S. 548 (1976) and United States v. Yoshida Int'l, Inc., 526 F.2d 560 (C.C.P.A. 1975)).

16. *Id.* at 644–46.

17. *See Algonquin*, 426 U.S. at 550 (upholding oil tariff imposed as a national security exception under Section 232).

18. *See Yoshida*, 526 F.2d at 573–77 (upholding four-month across-the-board tariff imposed under an emergency statute that preceded IEEPA).

split on the application of the MQD in tariff cases, such that it is unclear whether and under what circumstances the MQD will be dispositive in future cases in this area. The MQD sets up an Article I versus Article II conflict in tariff cases, which the Court did not resolve. Some Justices appear to think that the MQD must apply if the President imposes sweeping tariffs.[19] Some Justices think exactly the opposite, that the MQD does not apply to tariff cases, because of the Constitution's allocation of foreign affairs power to the executive.[20] Another view is that the MQD is part and parcel of textualism.[21] This last middle-of-the-road view, which may well prove the most successful path forward for the Court in finding consensus around the MQD's application, brings the spotlight back to statutory interpretation.

The *Learning Resources* Court did not enlist the Origination Clause in support of its decision, but it could have. And this analytical avenue might prove helpful in future cases. Case law interpreting the Origination Clause could be valuable if a court were facing a closer case in interpreting IEEPA or another statute because it helps distinguish between revenue-raising and non-revenue-raising statutes. IEEPA, for example, would not be considered a revenue-raising statute under Origination Clause case law in the first place, and thus could not have been found to violate the Origination Clause even if it had originated in the Senate rather than the House (because the Origination Clause would simply be inapplicable). This line of Origination Clause-based statutory interpretation analysis supports the Supreme Court's conclusion that IEEPA is not a revenue-raising statute (and thus is incapable of delegating revenue-raising powers), regardless of where the statute originated. As we anticipate more cases about tariffs and presidential power

19. *See Learning Res.*, 146 S. Ct. at 646 (Gorsuch, J., concurring) (calling the asserted tariff power "an extraordinary power" that requires application of the MQD); *see also* Jon Endean, *Tariffs as Taxes: A Framework for Understanding Delegation of the Taxing Power*, 63 SAN DIEGO L. REV. (forthcoming 2026) (manuscript at 21–28), https://ssrn.com/abstract=5421134 [https://perma.cc/5CM5-85WE] (proposing a "clear statement" structural canon for the delegation of tax and tariff powers).

20. *See Learning Res.*, 146 S. Ct. at 691 (Kavanaugh, J., dissenting) ("[I]n foreign affairs cases, courts read the statute as written and do not employ the major questions doctrine as a thumb on the scale against the President."); *see also* Timothy Meyer & Ganesh Sitaraman, *The National Security Consequences of the Major Questions Doctrine*, 122 MICH. L. REV. 55, 90 (2023) (explaining that the MQD would risk paralysis of essential economic policy projects that advance national security given the impracticality of Congressional response); *see also* Kristen E. Eichensehr & Oona A. Hathaway, *Major Questions About International Agreements*, 172 U. PA. L. REV. 1845, 1873–78 (2024) (arguing that application of the MQD to international agreements would upend foreign relations and national security policy).

21. *See Learning Res.*, 146 S. Ct. at 672 (Barrett, J., concurring) (writing that the MQD is "best understood as an ordinary application of textualism" and emphasizing "context"); *see also id.* at 675 (Kagan, J., concurring in part and concurring in the judgment) (preferring "usual text-in-context interpretation" but declining to use the "major questions doctrine" label to help describe that interpretive method).

in the future, we can expect statutory interpretation to play an important role in their resolution. Our Origination Clause analysis in this Article contributes to this ongoing project.

I. PRESIDENTIAL TARIFFS

A. Executive Orders

Upon taking office in January 2025, President Trump quickly began announcing tariffs on a wide range of goods imported from a wide range of countries. In January and February, he announced planned tariffs on goods from Mexico, Canada, and China in response to concerns about illegal immigration and drug trafficking.[22] On April 2, 2025, he issued an executive order imposing a global, across-the-board tariff of 10 percent, as well as higher country-by-country "reciprocal" tariffs calculated as a percentage equal to half of a specific country's goods trade deficit divided by that country's imports from the United States.[23] The country list was comprehensive, including over fifty-five countries plus the European Union, with rates reaching as high as 50 percent.[24] The country-specific tariffs were quickly postponed but were ultimately implemented in August 2025 for most jurisdictions with some revisions.[25]

Concurrently, President Trump also identified plans for new goods-specific tariffs covering, for example, steel, aluminum, automobiles, auto parts, copper, timber, critical minerals, pharmaceuticals, semiconductors,

22. *See* Designating Cartels and Other Organizations as Foreign Terrorist Organizations and Specially Designated Global Terrorists, Exec. Order No. 14,157, 90 Fed. Reg. 8439, 8439 (Jan. 20, 2025) (announcing tariffs on imports from Mexico); Imposing Duties to Address the Flow of Illicit Drugs Across Our Northern Border, Exec. Order No. 14,193, 90 Fed. Reg. 9113, 9114 (Feb. 1, 2025) (announcing tariffs on imports from Canada); Imposing Duties to Address the Synthetic Opioid Supply Chain in the People's Republic of China, Exec. Order No. 14,195, 90 Fed. Reg. 9121, 9122 (Feb. 1, 2025) (announcing tariffs on imports from China). *See generally* Ana Swanson, *Trump Promises Tariffs on Canada and Mexico, and Paves Way for Further Trade Action*, N.Y. TIMES (Jan. 20, 2025), https://www.nytimes.com/2025/01/20/us/politics/trump-tariffs-executive-order.html [https://perma.cc/4M9J-D6DG]; *Fact Sheet: President Donald J. Trump Imposes Tariffs on Imports from Canada, Mexico and China*, WHITE HOUSE (Feb. 1, 2025), https://www.whitehouse.gov/fact-sheets/2025/02/fact-sheet-president-donald-j-trump-imposes-tariffs-on-imports-from-canada-mexico-and-china/ [https://perma.cc/47PA-JE68].

23. *See* Regulating Imports with a Reciprocal Tariff to Rectify Trade Practices That Contribute to Large and Persistent Annual United States Goods Trade Deficits, Exec. Order No. 14,257, 90 Fed. Reg. 15041 (Apr. 2, 2025).

24. *See id.* Annex I (imposing a reciprocal tariff of 50 percent on Lesotho).

25. 50 U.S.C. §§ 1701–1710. *See* Further Modifying the Reciprocal Tariff Rates, Exec. Order No. 14,326, 90 Fed. Reg. 37963 (July 31, 2025); *see also* KEIGH E. HAMMOND & WILLIAM F. BURKHART, CONG. RSCH. SERV., R48549, PRESIDENTIAL 2025 TARIFF ACTIONS: TIMELINE AND STATUS, 6–20 tbls. 2, 3, 4 & 5 (2026), https://www.congress.gov/crs-product/R48549 [https://perma.cc/8B8Z-ZYTQ].

trucks, aircraft and engines, drones, and polysilicon.[26] There has been a vast and constantly changing array of imposed, imposed-and-paused-pending-negotiations, or contemplated tariffs during the Trump presidency. These have generated extensive and ongoing retaliation and countermeasures, negotiations, and announced deals with various countries, as well as litigation by plaintiffs adversely affected by the tariffs.[27]

The tariffs are broad and sweeping and have even been described by the President and the U.S. Secretary of the Treasury as a partial substitute for the income tax.[28] They appear to be intended as a permanent part of the revenue-raising public fiscal system. In 2026, on the day of the *Learning Resources* decision, an executive order announced a new global, across-the-board tariff of 10 percent, which took effect four days later and was to be in place for 150 days.[29] Meanwhile, the government is preparing to put in place yet more tariffs under other statutory authority after the 150-day window.[30]

B. Authorizing Statutes

Various congressional statutes delegate the ability to set tariff policy to the President.[31] As trade scholars have observed, these statutes can be sorted into two types.[32] One type empowers the President to reduce tariffs, for

26. *See* HAMMOND & BURKHART, *supra* note 25.

27. *See, e.g.*, *Trade Compliance Resource Hub*, REEDSMITH, www.tradecomplianceresourcehub.com [https://perma.cc/NZ6U-WZFS] (providing up-to-date tariff tracker); *see also* HAMMOND & BURKHART, *supra* note 25, at tbl.6.

28. *See* Richard Rubin, *Trump Floats Improbable Income-Tax Cut Tied to Tariffs*, WALL ST. J. (Apr. 28, 2025) (reporting President's statement linking tariff increases to income tax cuts), https://www.wsj.com/politics/policy/tariffs-income-taxes-revenue-8b647e6b [https://perma.cc/D9UY-CES2]; Interview by Tucker Carlson with Scott Bessent, Sec., U.S. Dep't of the Treasury, in Washington, D.C. (Apr. 7, 2025) (quoting Secretary of Treasury Bessent as explaining that although the legislative budgeting process would not give "credit for [presidential] tariffs in any bill," tariffs could nevertheless pay for legislative tax breaks such as "no tax on tips"), https://home.treasury.gov/news/press-releases/sb0073 [https://perma.cc/A8AC-A98G].

29. Proclamation No. 11012, 91 Fed. Reg. 9339 (Feb. 20, 2026).

30. *See* Gavin Bade, *Trump Targets Industrial Subsidies and Forced Labor in Tariff Probes*, WALL ST. J. (Mar. 11, 2026), https://www.wsj.com/politics/policy/trump-tariff-probe-trade-act-8e3ff874 [https://perma.cc/KUG3-43A8] (reporting unfair trade practice investigations targeting about sixty nations under Section 301 and consideration of tariffs under Section 232).

31. The first such statute was the McKinley Tariff, Act of Oct. 1, 1890, ch. 1244, § 3, 26 Stat. 567, 612. *See* Oona Hathaway, *Presidential Power over International Law: Restoring the Balance*, 119 YALE L.J. 140, 173–74 (2009) (noting that this agreement was the first to delegate important international law executive agreement power to the President); DOUGLAS A. IRWIN, CLASHING OVER COMMERCE: A HISTORY OF US TRADE POLICY 303–05 (2017) (noting executive authority innovation of 1890 Act).

32. *See* Kathleen Claussen & Timothy Meyer, *Economic Security and the Separation of Powers*, 172 U. PA. L. REV. 1955, 1963–64 (2024) (contrasting statutes that allowed the President to increase tariffs for national security reasons with statutes, starting with the Reciprocal Trade Agreements Act of

instance through trade liberalization agreements brokered through international institutions like the General Agreement on Tariffs and Trade and the World Trade Organization.[33] The other type allows the President to increase tariffs by invoking exceptions. For instance, Section 122 allows the imposition of an across-the-board tariff of up to 15 percent for up to 150 days to address "fundamental international payments problems."[34] Section 232 contains a national security exception,[35] and Section 301 allows the President to respond to other countries' unfair trade practices.[36] The President also has emergency powers under statutes such as IEEPA.[37]

The President asserts that various statutes, including Section 122, Section 232, Section 301, and IEEPA, authorize him to impose tariffs.[38] He initially made extensive use of IEEPA, which imposes the fewest requirements on the executive branch.[39]

C. Litigation to Date

Unsurprisingly, the President's attempts to impose tariffs have generated litigation. Because the President relied initially on IEEPA to authorize the 10 percent across-the-board tariff and the "reciprocal" country-specific tariffs, the leading case, *V.O.S. Selections, Inc. v. Trump*, addressed IEEPA.[40] In *V.O.S. Selections*, the Federal Circuit affirmed the Court of International Trade's decision that IEEPA did not authorize the President to

---

1934, that anticipated "liberalizing trade agreements" including in cooperation with the General Agreement on Tariffs and Trade and the World Trade Organization).

33. *See* Ashley Deeks & Andrew Hayashi, *Tax Law as Foreign Policy*, 170 U. PA. L. REV. 275, 290–94, 321–22, 334–37 (2022) (arguing that tariffs and other taxes are and should be instruments of economic foreign policy, that their advantages include greater flexibility compared to other tools such as export controls, and that a possible institutional competence disadvantage is the requirement that Congress enact tax laws).

34. *See* Trade Act of 1974, Pub. L. No. 93-618, § 122, 88 Stat. 1978, 1987–89 (1975), *codified at* 19 U.S.C. § 2132. This statute originated in the House. *See* H.R. 10710, 93d Cong. (1973).

35. *See* Trade Expansion Act of 1962, Pub. L. No. 87-794, § 232(c), 76 Stat. 872, 877, *codified at* 19 U.S.C. § 1862. This statute originated in the House. *See* H.R. 11970, 87th Cong. (1962).

36. *See* Trade Act of 1974 §§ 301–302, *codified at* 19 U.S.C. §§ 2411–2412; *see also* 19 U.S.C. §§ 2413–2420. This statute originated in the House. *See* H.R. 10710, 93d Cong. (1973).

37. *See* 50 U.S.C. §§ 1701–1710.

38. *See generally* HAMMOND & BURKHART, *supra* note 25.

39. *See* CHRISTOPHER T. ZIRPOLI, CONG. RSCH. SERV., R48435, CONGRESSIONAL AND PRESIDENTIAL AUTHORITY TO IMPOSE IMPORT TARIFFS 26 tbl.1 (2026), https://www.congress.gov/crs-product/R48435 [https://perma.cc/AJ3A-M9VJ] (showing that IEEPA required much less presidential factfinding and process compared to other tariff statutes).

40. *See* V.O.S. Selections, Inc. v. Trump, 772 F. Supp. 3d 1350 (Ct. Int'l Trade) (consolidating litigation brought by several small businesses and twelve states and striking down worldwide and retaliatory tariffs announced on April 2, 2025 and modified thereafter under the claimed authority of IEEPA), *aff'd*, 149 F.4th 1312 (Fed. Cir. 2025), *aff'd sub nom.* Learning Res., Inc. v. Trump, 146 S. Ct. 628 (2026).

impose the April 2 tariffs.[41] The Supreme Court granted certiorari, consolidated the case with *Learning Resources, Inc. v. Trump*, and heard oral arguments on the consolidated cases on November 5, 2025.[42]

On February 20, 2026, the Supreme Court issued its opinion in *Learning Resources*. The *Learning Resources* Court affirmed the Federal Circuit's *V.O.S. Selections* decision, using statutory interpretation reasoning. But the Court was split on the application of the major questions doctrine. This contrasted with the approach of the Federal Circuit, which first held under ordinary statutory interpretation principles that IEEPA did not authorize the President's tariffs, and then also held that interpreting IEEPA to allow the President to impose sweeping tariffs would violate the MQD. The Federal Circuit reasoned that the broad interpretation of the emergency power was unprecedented, that "tariffs are a core Congressional power," and that the April 2 tariffs were expected to generate more than $2 trillion over ten years.[43] The Federal Circuit in *V.O.S. Selections* rejected the counterargument that the MQD did not apply because tariff policy involved Article II matters of foreign affairs and national security.[44]

II. The Origination Clause in Historical Context

A. The Origin of the Origination Clause

The Constitution gives Congress the power to tax, stating that "The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States."[45] The Origination Clause, Article I, Section 7, Clause 1, provides a further process-related specification for the taxing power, stating that "All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills."[46] From the beginning, the Clause's reference to "Bills for raising revenue" has been understood to apply to

41. *V.O.S. Selections*, 149 F.4th 1312.

42. *See Learning Res.*, 146 S. Ct. 73 (mem.) (2025). Note that the Supreme Court lists *Learning Resources* first after consolidating the cases. *Id.*

43. *See V.O.S. Selections*, 149 F.4th at 1335–36.

44. *See id.* at 1336–37. *But see* Am. Inst. Int'l Steel, Inc. v. United States, 806 F. App'x 982, 990 (Fed. Cir. 2020) (considering whether the Supreme Court might depart from *J.W. Hampton*'s Article I delegation framework for tariffs in favor of an Article II foreign affairs or national security analysis); Claussen & Meyer, *supra* note 32, at 1970–78 (describing and criticizing arguments for Article-II-based trade and tariff power).

45. U.S. CONST. art. I, § 8, cl. 1.

46. U.S. CONST. art. I, § 7, cl. 1.

tariffs, imposts, and excises.[47] For the first 150 years after the adoption of the Constitution, tariffs made up the vast majority of federal revenue,[48] and they continue to operate within the context of the larger tax system.[49]

The Clause was enacted as part of the 1787 Great Compromise between small and large states establishing the bicameral legislature: The dissatisfaction of larger, more populous states, who were less well represented in the Senate, was appeased by locating the power to tax in the House, where those large states were better represented.[50] The Framers gave careful attention to the Clause.[51] The House's agenda-setting power for revenue bills was said to offset not only the disproportionate power of smaller states in the Senate but also other Senate powers, including those relating to approval of executive appointments and treaties.[52] Early tariffs were heavily negotiated in Congress and enacted as extremely detailed statutes.[53] Recent commentators continue to describe the Origination Clause as the Framers' attempt to locate the power to tax in the legislative body most accountable to the people—the House.[54] As one Supreme Court Justice

---

47. *See* 3 JOSEPH STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES §§ 873–880 (1833) (tracing history of Origination Clause to House of Commons' responsibility for "money bills"); Michael W. Evans, *A Source of Frequent and Obstinate Altercations: The History and Application of the Origination Clause,* 105 TAX NOTES 1215, 1216 (2004) (same).

48. *See, e.g.*, W. ELLIOT BROWNLEE, FEDERAL TAXATION IN AMERICA: A HISTORY 47–48 (3d ed. 2016) (observing the major role that tariffs played in funding federal domestic as well as military spending in the early years of the country); *Tariffs as a Major Revenue Source: Implications for Distribution and Growth*, fig.1a, WHITE HOUSE (July 12, 2024), https://web.archive.org/web/20240712160048/https://www.whitehouse.gov/cea/written-materials/2024/07/12/tariffs-as-a-major-revenue-source-implications-for-distribution-and-growth/ [https://perma.cc/3JCP-NJ75] (showing tariff revenue as a share of total federal receipts from 1798–2023); Kysar, *On the Constitutionality of Tax Treaties*, *supra* note 5, at 47 (noting that "tariffs receded in importance once the Constitution permitted an income tax in 1913").

49. *See* Domenico Imparato, Reuven S. Avi-Yonah & Doron Narotzki, *No Trade Wars Without Taxation—Who's to Blame, and What Comes Next?*, 29 FLA. TAX REV. (forthcoming 2026), https://ssrn.com/abstract=5414555 [https://perma.cc/JAW7-Y8TT].

50. *See, e.g.*, Nicholas Bagley & Thomas A. Smith, *Common Interpretation: Article I, Section 7*, NAT'L CONST. CTR., https://constitutioncenter.org/the-constitution/articles/article-i/clauses/766 [https://perma.cc/NKX4-WUUP].

51. *See* Rosenberg, *supra* note 8, at 422–26 (describing debates over the Origination Clause at the Constitutional Convention).

52. *See* Kysar, *On the Constitutionality of Tax Treaties*, *supra* note 5, at 8–9 (describing the adoption of the Origination Clause).

53. *See* Conor Clarke & Ari Glogower, *Tariffs and the Taxing Power: Historical Lessons for Major Questions and Nondelegation*, 103 WASH. U. L. REV. 1867, 1886–90 & nn.98–113 (2026) (explaining the statutory style of more specific delegation for external taxes like tariffs and less specific delegation for internal taxes such as income taxes, in earlier revenue statutes).

54. *See, e.g.*, *The Original Meaning of the Origination Clause: Hearing Before the Subcomm. on the Const. and Civ. Just. of the H. Comm. on the Judiciary*, 113th Cong. 1–2 (2014) [hereinafter *Origination Clause Hearing*] (statement of Trent Franks, Chairman, Subcomm. on the Const. and Civ. Just.), https://www.congress.gov/113/meeting/house/102165/documents/HHRG-113-JU10-Transcript-20140429.pdf [https://perma.cc/Q62C-JGUK] (noting that the House is more accountable because of

wrote in dissent in 2025, "As the Framers saw it, 'the Chamber that is more accountable to the people should have the primary role in raising revenue.'"[55]

B. House Enforcement

The procedural details of how the Origination Clause is enforced by the House have been discussed elsewhere in the literature and in various reports, so we will only describe the key points here.[56]

The initial line of Origination Clause enforcement rests with the House and is undertaken through a process called "blue slipping," in which the House may defend its authority to originate legislation by making a "blue slip resolution" to return an offending bill to the Senate. Such a resolution may be offered by the Ways and Means Committee chairperson or by other members. Thus, the House is usually the actor that initiates formal enforcement of the Origination Clause power. Short of such formal enforcement, the House also has the ability to act less formally, for example by ignoring a Senate bill, by having problematic provisions removed in conference, or by reporting its own bill.[57] If the House were to decline to enforce its origination prerogative, the Senate could play a role by declining to consider a noncompliant piece of legislation or by ruling that a measure violates Senate rules or procedures and is "out of order."[58]

The Congressional Research Service reports twenty-five instances between 1991 and 2024 in which the House has "blue-slipped" the Senate by making a resolution to return a bill for Origination Clause violations.[59] These instances include not only measures amending the Internal Revenue Code but also measures imposing economic sanctions, imposing or changing import restrictions on certain goods and countries, or imposing

---

elections every two years as opposed to every six years in the Senate). Note that the Senate was not elected until the passage of the 17th Amendment in 1913. *See* U.S. CONST. amend. XVII.

55. FCC v. Consumers' Rsch., 606 U.S. 656, 721–25 (2025) (Gorsuch, J., dissenting) (citing and quoting United States v. Munoz-Flores, 495 U.S. 385, 395 (1990)).

56. *See, e.g.*, Evans, *supra* note 47; JAMES V. SATURNO, CONG. RSCH. SERV., R46556, BLUE-SLIPPING: ENFORCING THE ORIGINATION CLAUSE IN THE HOUSE OF REPRESENTATIVES (2024), https://www.congress.gov/crs-product/R46556 [https://perma.cc/45WT-X4K4] [hereinafter SATURNO, BLUE-SLIPPING]; JAMES V. SATURNO, CONG. RSCH. SERV., R46558, THE ORIGINATION CLAUSE OF THE U.S. CONSTITUTION: INTERPRETATION AND ENFORCEMENT (2024), https://www.congress.gov/crs-product/R46558 [https://perma.cc/88NC-RZE2] [hereinafter SATURNO, ORIGINATION CLAUSE INTERPRETATION AND ENFORCEMENT]; Rebecca M. Kysar, *The 'Shell Bill' Game: Avoidance and the Origination Clause*, 91 WASH. U. L. REV. 659, 671–72, 689 (2014) (explaining blue-slipping).

57. SATURNO, BLUE-SLIPPING, *supra* note 56, at 1–2.

58. SATURNO, ORIGINATION CLAUSE INTERPRETATION AND ENFORCEMENT, *supra* note 56, at 6.

59. SATURNO, BLUE-SLIPPING, *supra* note 56, at 3 tbl.1.

user fees or changing other revenue laws.[60] In addition, there are other steps the House can take to render a piece of legislation Origination Clause-compliant that may be less visible. For example, there were no blue slips in six congressional sessions between 1991 and 2024.[61] But we do not know whether less formal methods achieved Origination Clause compliance. For instance, the House might refuse to consider Senate-reported revenue legislation, strike revenue-related language, or originate its own bill to address the violation.

C. Judicial Interpretations

Origination Clause cases are justiciable, so that courts, as well as the House, may enforce the Clause.[62] In contrast to the House blue-slipping procedure, Origination Clause cases arise in court ex post, after legislation has been enacted. Getting an Origination Clause matter heard by a court is not automatic, but rather arises after a plaintiff suffers injury as a result of the statute, acquires standing, and decides to sue. The Supreme Court has never found an Origination Clause violation.[63]

Under existing case law, there are two different pressure points in determining whether a statute survives an Origination Clause challenge. First, the statute may be unconstitutional under the Clause if it was not originated by the House. Here, courts have applied the "enrolled bill" approach, which traces to the Court's 1892 decision in *Marshall Field & Co. v. Clark*; under this approach, legislation will be found compliant with the Origination Clause as long as the bill was appropriately "enrolled" in the congressional records.[64] In *Field v. Clark*, the plaintiff alleged that a

60. *See* SATURNO, ORIGINATION CLAUSE INTERPRETATION AND ENFORCEMENT, *supra* note 56, at 6. It is hard to interpret the impact of these twenty-five instances because of the hidden nature of the political economy involved in the House decision of whether to blue slip. For one thing, we would need to determine the relevant denominators—that is, how many revenue-related provisions each Congress considered in total and how many of those revenue-related laws might have justifiably been blue slipped (even if they were not). Moreover, the outcome of a blue-slipping resolution depends not only on the response of the Senate but also on whether or not a blue-slipped revenue measure eventually becomes law when inserted into later legislation compliant with the Origination Clause.

61. *See* SATURNO, BLUE-SLIPPING, *supra* note 56, at 3 tbl.1 (showing no blue slipping in the 108th, 109th, 110th, 113th, 115th, or 116th sessions).

62. *See* United States v. Munoz-Flores, 495 U.S. 385, 390 (1990) (holding that an Origination Clause challenge was justiciable).

63. *See* Sissel v. U.S. Dep't of Health & Hum. Servs., 799 F.3d 1035, 1036 (D.C. Cir. 2015) (Rogers, Pillard, and Wilkins, JJ., concurring in the denial of reh'g en banc). *See, e.g.*, Erik M. Jensen, *The Origination Clause and the Validity of Taxing Statutes*, J. TAX'N INVS., Winter 2019, at 61, 74 (explaining that the Supreme Court's Origination Clause case law generally allows it to avoid "interfering with legislative prerogatives").

64. Field v. Clark, 143 U.S. 649 (1892).

provision had been left out of the 1890 tariff act presented to Congress,[65] but House and Senate leaders attested that the bill was complete through their typical journal entry system.[66] The Court upheld the law and explained that it would not second-guess legislative records indicating that Origination Clause requirements were met.[67] Instead, internal House and Senate records provide dispositive evidence of a bill's origin.[68]

Second, courts examine the use of the funds raised by a statute to determine whether the statute is a revenue-raising statute subject to the Origination Clause's requirements at all. If it is not revenue raising, then the statute will not be subject to the Origination Clause's requirements. Although this approach is sometimes called "purposive," it does not necessarily examine legislative history or other sources outside the statute's text. Rather, it is concerned with the purpose or goal for which the funds are collected, as stated in the statute. For instance, the Court used the so-called "purposive" approach in *United States v. Munoz-Flores*, which involved a special statutory assessment added to a criminal penalty to fund a crime victims' fund.[69] The Court reasoned that the case did not involve a bill "for raising revenue" because the law funded a specific and narrow goal rather than having the purpose of contributing to the Treasury's general fund.[70] Justice Antonin Scalia, however, wrote a concurrence advancing the enrolled-bill theory instead as the ground for decision.[71]

In 2015, in *Sissel v. United States Department of Health & Human Services*, judges on the D.C. Circuit split over whether to apply the "purposive" analysis or the enrolled bill approach to decide that the Affordable Care Act ("ACA") would survive an Origination Clause

65. *Id.* at 669 (alleging that presented bill omitted a section).

66. *See id.* at 672 (describing customary signature procedure).

67. *See id*.

68. *Field v. Clark* is best understood as a rule of evidence. *See* Tara Leigh Grove, *The Lost History of the Political Question Doctrine*, 90 N.Y.U. L. REV. 1908, 1934 n.141 (2015). Declining to interfere with congressional procedure could also be categorized as a political question that federal courts consider themselves ineligible to decide. *See* Aziz Z. Huq, *Standing for the Structural Constitution*, 99 VA. L. REV. 1435, 1453–54 (2013) (giving examples of Origination Clause cases and writing that there may not be a right to challenge all structural constitutional violations). But this would be inconsistent with the justiciability of Origination Clause cases. *See* United States v. Munoz-Flores, 495 U.S. 385, 394 (1990) (rejecting application of political question doctrine and holding that intra-branch allocation of power between houses of Congress was justiciable) (citing Baker v. Carr, 369 U.S. 186, 217 (1962)).

69. *See Munoz-Flores*, 495 U.S. at 387 (noting special assessment of $25 provided for by 18 U.S.C. § 3013).

70. *See id.* at 397–400 (noting specific purpose of crime victims' fund despite possibility of some contribution to general revenue and relying on the word "for" in purposive analysis).

71. *See id*. at 408–09 (Scalia, J., concurring) (preferring to rest conclusion on enrolled bill rule because the bill was labeled a House Joint Resolution).

challenge.[72] The ACA was a sweeping revision of health care law that included tax provisions that were estimated to raise about $473 billion over ten years.[73] The ACA technically originated in the House as the Service Members' Home Ownership Act, but the Senate then used a shell bill tactic and passed a "gut and replace" amendment that inserted an entirely new bill.[74] The D.C. Circuit used the "purposive" analysis to uphold the ACA, reasoning that the ACA's tax provisions funded the regulatory health care objectives of the statute and thus were not "for" raising revenue, even though the ACA tax provisions produced substantial revenue that went into the general fund.[75]

In dissenting from a denial of rehearing en banc, then-Judge Brett Kavanaugh would have adopted the enrolled-bill approach instead.[76] That is, he would have said that the Constitution permits the Senate to amend House bills and that such amendment power lacks any germaneness requirement, so that a bill complies with the Clause as long as the House originates it, even if the Senate does a gut-and-replace amendment.[77] Kavanaugh emphasized the established congressional norm of such sweeping amendments that replace an entire bill's text.[78] Thus, under Kavanaugh's approach, there would be no need to reach the purposive analysis.

As discussed further below,[79] the Supreme Court's decision in *FCC v. Consumers' Research* may suggest that the current Court would prefer to avoid an inquiry into whether a bill was "for" raising revenue. In *Consumers' Research*, the Court expressed skepticism about the judicial task of distinguishing between statutes that raise revenue and those that do

---

72. *See* Sissel v. U.S. Dep't of Health & Hum. Servs., 799 F.3d 1035, 1036 (D.C. Cir. 2015) (Rogers, Pillard, and Wilkins, JJ., concurring in the denial of reh'g en banc).

73. *See id*. at 1049 (Kavanaugh, J., dissenting from denial of rehearing en banc) (explaining that ACA tax provisions would raise about $473 billion over ten years to offset the cost of the ACA's program).

74. *See id.* at 1062.

75. *See id.* at 1044–49 (Rogers, Pillard, and Wilkins, JJ., concurring in the denial of reh'g en banc) (emphasizing the word "for" and applying purposive test). Scholars have objected that the court should have considered whether the Senate's amendment was germane, *see* Robert G. Natelson, *The Founders' Origination Clause and Implications for the Affordable Care Act*, 38 HARV. J.L. & PUB. POL'Y 629, 708–09 (2015), and should have guarded against the indirect evasion of the Origination Clause made possible by the gut-and-replace approach, *see* Tessa L. Dysart, *The Origination Clause, the Affordable Care Act, and Indirect Constitutional Violations*, 24 CORNELL J.L. & PUB. POL'Y 451, 490–91 (2015).

76. *See Sissel*, 799 F.3d at 1062 (Kavanaugh, J., dissenting from denial of rehearing en banc) (arguing that a gut-and-replace Senate amendment complies with the Origination Clause).

77. *See* Kysar, *supra* note 56, at 689–90 (advocating the same analysis later articulated by Kavanaugh in dissenting from the denial of rehearing en banc).

78. *See Sissel*, 799 F.3d at 1063 (Kavanaugh, J., dissenting from denial of rehearing en banc).

79. *See infra* Section III.B.

not. Nevertheless, both the enrolled-bill analysis and the "purposive" analysis are available precedent under the Origination Clause. Moreover, the "purposive" analysis is a necessary part of Origination Clause jurisprudence. Consider a statute that originated as a bill in the Senate and plainly had nothing to do with revenue because, for instance, the statute forbade revenue raising or any adjustment to revenue law or policy. If that statute later faced an Origination Clause challenge, a court would need the "purposive" analysis to explain why the statute was not a revenue statute, therefore was not required to originate in the House, and therefore did not violate the Origination Clause.

III. THE ORIGINATION CLAUSE'S INEFFECTIVENESS AS A CONSTITUTIONAL CONSTRAINT

We now examine the potential of the Origination Clause acting as a constitutional constraint on broad presidential tariffs and conclude that it is a weak constraint both as a matter of constitutional doctrine and as a matter of pragmatic enforcement. First, current jurisprudence has been unfavorable to finding Origination Clause violations. Second, there is no guarantee that the House will effectively enforce and safeguard its origination powers. Third, public enforcement is also likely to be ineffective.

A. The Argument for the Origination Clause as a Constitutional Constraint

The notion that the Origination Clause could serve as an explicit constitutional limit is not new. Various commentators and litigants have argued that the Origination Clause can and should be relevant in enforcement of the constitutional boundaries of taxing powers.[80] One form

80. *See, e.g.*, Kysar, *Is Trump's Tariff Plan Constitutional?*, *supra* note 5 (contending that imposition of tariffs in first Trump presidency through executive order would violate the Origination Clause); Brief for Tax Law Professors as Amici Curiae in Support of Petitioners in No. 24-1287 and Respondents in No. 25-250 at 10–11, Learning Res., Inc. v. Trump, 146 S. Ct. 628 (2026) (arguing that the Constitution's text and structure reserve the tariff power to Congress as the representative branch of government), https://openscholarship.wustl.edu/law_scholarship/908 [https://perma.cc/HRJ8-DH5T]; sources cited *supra* note 8; *Origination Clause Hearing*, *supra* note 54, at 1–2 (statement of Trent Franks, Chairman, Subcomm. on the Const. and Civ. Just.) (testimony on the origins, historical importance to the allocation of government powers and ongoing relevance of the Origination Clause, as considered in the context of debates regarding the constitutionality of the Affordable Care Act); Ronald J. Krotoszynski, Jr., *Reconsidering the Nondelegation Doctrine: Universal Service, the Power to Tax, and the Ratification Doctrine*, 80 IND. L.J. 239, 243–44 (2005) (referencing the Origination Clause and contending that "the importance that the Framers placed on the power to raise and spend money should inform nondelegation jurisprudence"); Dysart, *supra* note 75, at 491 (arguing that a Senate's move to

of challenge arises where plaintiffs allege that legislation raises revenue but did not originate in the House.[81] This kind of challenge is not available for statutes like IEEPA that originated in the House.[82]

The Origination Clause might also affect analysis under the constitutional nondelegation doctrine, which imposes an "intelligible principle" requirement for statutory delegations of authority. The "intelligible principle" requirement arose from a tariff powers case.[83] However, no tariff power has been invalidated under nondelegation analysis, and indeed nondelegation has been invoked successfully in only two Supreme Court cases.[84]

A nondelegation analysis takes as its starting point that the President's tariff power must be derived from Article I and from a congressional delegation, rather than from Article II.[85] The Origination Clause helps buttress the argument for viewing Article I as the analytical starting point. Further, some scholars support a more stringent nondelegation doctrine for tax, based on the explicit language of the Origination Clause and the Taxing Power Clause. They argue that the Constitution's emphatic and repeated placement of the taxing power in the hands of Congress, together with Founding-era historical evidence of the importance placed on the Article I nature of the power, should require a stricter standard for delegating the taxing power to the executive.[86]

---

gut and replace a House bill with revenue-raising provisions can constitute an indirect violation of the Origination Clause).

81. *See* Sissel v. U.S. Dep't of Health & Hum. Servs., 760 F.3d 1 (D.C. Cir. 2014), *reh'g en banc denied*, 799 F.3d 1035 (D.C. Cir. 2015). *See also* Brief of Association of American Physicians & Surgeons as Amicus Curiae in Support of the State of Texas et al. at 23, California v. Texas, 593 U.S. 659 (2020) (Nos. 19-840 & 19-1019), https://www.supremecourt.gov/DocketPDF/19/19-840/146830/20200702112150767_19-840%2019-1019%20AssociationOfAmericanPhysiciansSurgeons.pdf [https://perma.cc/TKV3-8G2W] (arguing that the ACA did not originate in the House for purposes of the Origination Clause, and that the Origination Clause governs the statute).

82. *See infra* text accompanying notes 128–130 (giving IEEPA's legislative history).

83. J.W. Hampton, Jr., & Co. v. United States, 276 U.S. 394, 409 (1928).

84. *See* Panama Refining Co. v. Ryan, 293 U.S. 388 (1935); A.L.A. Schechter Poultry Corp. v. United States, 295 U.S. 495 (1935).

85. *See generally* Kysar, *Is Trump's Tariff Plan Constitutional?*, *supra* note 5 (contending that imposition of tariffs in first Trump presidency through executive order would violate the Origination Clause); *see also* Kysar, *supra* note 56, at 671–98 (exploring the scope of the Origination Clause constraint on Congress); Kathleen Claussen & Timothy Meyer, *The Foreign Commerce Power*, 114 CALIF. L. REV. 407 (2026) (analyzing the presidential trade authority under the Constitution).

86. *See, e.g.*, Rosenberg, *supra* note 8, at 420 (arguing that the Origination Clause should limit congressional power to delegate); Settle, *supra* note 8, at 716–19; Krotoszynski, *supra* note 80, at 243–44 (referencing the Origination Clause and contending that "the importance that the Framers placed on the power to raise and spend money should inform nondelegation jurisprudence"). *See also* Endean, *supra* note 19, at 11 (linking Founders' focus on adequate legislative process to their conception of taxation as the seizure of private property).

Some current Justices also argue for a stricter nondelegation doctrine for tax.[87] This argument for a special nondelegation doctrine for tax would be most relevant in a case where a statute clearly states a delegation of broad taxing powers to the President. In such a case, it would be clear that Congress had tried to delegate sweeping taxing powers, and the dispositive question would be whether the Constitution permitted Congress to delegate such powers.

B. FCC v. Consumers' Research *and Why the Argument Fails*

In 2025, the Supreme Court rejected these scholarly conceptions of a special nondelegation doctrine for tax in *Federal Communications Commission v. Consumers' Research*.[88] In *Consumers' Research*, the Court considered a statute that authorized the FCC to require carrier contributions to fund universal access to telephone and internet service. The Court decided that Congress could constitutionally transfer to the FCC the authority to set the terms of contribution.[89] It concluded that the statute's authorization to the FCC to raise "sufficient" funds to support access for rural, low-income, school, and hospital users satisfied the intelligible principle test.[90]

The *Consumers' Research* Court observed that the intelligible principle test, which arose in the 1928 tariff case *J.W. Hampton, Jr., & Co. v. United States*,[91] did not suggest that there should be any special nondelegation rule for revenue-raising or tax cases. Likewise, wrote the Court, no special revenue-raising nondelegation rule was applied in *Skinner v. Mid-America Pipeline Co.*, a 1989 decision involving pipeline safety user fees.[92] In *Skinner*, Justice Sandra Day O'Connor, writing for a unanimous Court, stated that neither the Taxing Power Clause nor the Origination Clause places a special tax constraint on Congress's power to delegate.[93]

---

87. *See, e.g.*, FCC v. Consumers' Rsch., 606 U.S. 656, 721–25 (2025) (Gorsuch, J., dissenting) (in taking the intelligible principle test seriously as a constraint on congressional delegations of taxing powers, noting that "[t]axation ranks among the government's greatest powers. Indeed, it is arguably the federal government's 'most important . . . authorit[y]' . . . . Reflecting as much, the Constitution provides that all legislation 'for raising Revenue' must 'originate in the House of Representatives.' . . . As the framers saw it, 'the Chamber that is more accountable to the people should have the primary role in raising revenue.'" (citations omitted)).

88. *Id.* (majority opinion).

89. *See id.* at 672–76 (applying "usual nondelegation standard"). A second sub-delegation analysis concluded that the FCC validly delegated authority to set the contribution terms to a third party. *See id.* at 690–93.

90. *See id.* at 679–83.

91. *See* J.W. Hampton, Jr., & Co. v. United States, 276 U.S. 394, 409 (1928).

92. *See* Skinner v. Mid-America Pipeline Co., 490 U.S. 212, 220–21 (1989).

93. *See id.* (noting the "discretionary authority" delegated in I.R.C. § 7805).

In *Consumers' Research*, the Court upheld the statute that authorized the FCC to impose fees for the universal service fund. Justice Elena Kagan wrote for the Court that any special nondelegation approach for tax was contrary to precedent. The Court also wrote that an exceptional nondelegation doctrine for tax would be unworkable, due to the difficulty of distinguishing taxes from fees.[94] Although the majority opinion in *Consumers' Research* did not cite either the Origination Clause or the Taxing Power Clause, it referenced "Congress' taxing power."[95] The Court's rejection of a special nondelegation rule for tax indicates that it did not perceive either constitutional clause as a powerful constraint on delegation.

The *Consumers' Research* dissent, authored by Justice Neil Gorsuch and joined by Justices Samuel Alito and Clarence Thomas, would have considered nondelegation questions in context, including by referring to the Origination Clause and the Taxing Power Clause.[96] If the *Consumers' Research* Court had taken the dissent's view that the Constitution constrains Congress more tightly with respect to the delegation of taxing power, the prospect of challenging presidential tariff power under a nondelegation theory would be more promising. But as it stands, the *Consumers' Research* decision confirms the weak nature of the Origination Clause as a judicially enforced constitutional constraint on what Congress may delegate to the President.

C. The Limits of House Enforcement

The above analysis concludes that the Origination Clause does not provide a strong constitutional limit on what Congress may delegate to the President. Furthermore, in terms of congressional strategy and political process, the likelihood of the House itself successfully asserting its origination power so as to strongly bind assertions of presidential tariff powers is also low. As discussed in Part II, enforcement by the House against Senate encroachment can be formally accomplished via a blue slip resolution, ex ante, before Congress passes legislation.[97] But reliance on the House to police its exclusive grant from the Origination Clause is likely to fail in many circumstances.

94. *See Consumers' Rsch.*, 606 U.S. at 677 (writing that distinguishing taxes from fees would be "a morass").
95. *Id.*
96. *Id.* at 721–25 (Gorsuch, J., dissenting) (citing both U.S. CONST. art. I, § 7, cl. 1 and U.S. CONST. art. I, § 8, cl. 1).
97. *See supra* Section II.B (explaining blue slipping).

In situations where both the House and the Senate are in favor of granting the President extensive tariff powers ex ante and are working in cooperation to enact legislation that does so, little burden would be imposed by the Origination Clause as a constraint on legislation. Congress would simply have to ensure that the revenue legislation commences in the House, which is easily done using strategies such as re-originating a Senate bill in the House or replacing the contents of a House shell bill in the Senate. If that is done, then there would be little room for judicial intervention on constitutional grounds, except by way of a nondelegation challenge, which, as detailed above, would not receive special consideration just because it involves tax. Likewise, even if the House is not actively in favor of granting tariff powers but rather passively declines to object, as long as the House has checked the box by starting the legislative process, Congress has still satisfied the Clause.

Indeed, some commentators examining the legislative dance over who drafts and originates bills have offered a tempered assessment of the relevance of which legislative body moves first. For example, in the context of Affordable Care Act litigation, one observer characterized the congressional strategy over Origination Clause compliance as merely pro forma and carrying limited political leverage. Under this view, even if the Senate thought it was writing a bill that did not raise revenue within the meaning of the "purposive" analysis adopted in *Sissel*, the Senate would choose to stay on the safe side, as "[t]he prudent course would still be to adhere to the costless formality of amending a House-originated revenue bill."[98] This logic demonstrates that if the House and Senate support delegation to the President, the Origination Clause does not do much work.

In later-in-time situations where a broad unilateral reading of a pre-existing statute provides the basis for the President's claim of expansive tariff or other taxing powers, ex post House enforcement will also be constrained. If the legislation claimed to be authorizing the powers did not originate in the House, this would now be a matter for the courts, not the House directly, since the moment available for the blue-slipping procedure would have come and gone. Even if some members of the House or Senate objected to the presidential taxing power grab, the possibility of direct standing to object in court is unclear and uncertain.[99] The more likely

98. Nicholas Bagley, *The D.C. Circuit Splits over the ACA and the Origination Clause*, YALE J. ON REG.: NOTICE & COMMENT (Aug. 11, 2015), https://www.yalejreg.com/nc/the-d-c-circuit-splits-over-the-aca-and-the-origination-clause-by-nicholas-bagley/ [https://perma.cc/PDS9-YSMK].

99. The D.C. Circuit has held that a House committee has standing to challenge a President on grounds that he exceeded the authority of a statute. *See* U.S. House of Representatives v. Mnuchin, 969 F.3d 353, 354 (D.C. Cir. 2020) (finding standing to challenge an allegedly unauthorized appropriation), *vacated as moot by* Yellen v. U.S. House of Representatives, 142 S. Ct. 332 (2021) (mem.). However,

remedy would be enactment of a second round of legislation clarifying or explicitly limiting the President's tariff authority. However, there are well-understood legislative process reasons why getting such legislation through Congress would be difficult.

The situation where legislation was either sloppy or imprecise, or was not perceived by Congress as revenue raising at the time of enactment, raises essentially the same later-in-time issues for House enforcement of the Origination Clause. If the President imposes tariffs based on ambiguous legislation or legislation that Congress had not perceived as revenue raising in nature, direct enforcement of the Origination Clause and the Taxing Power Clause would again fall to the courts. While an objecting House and Senate could safeguard their constitutionally derived powers over taxation by enacting new clarifying legislation that explicitly rejects the President's claim of delegated tariff authority, the congressional action should not be presumed. There may be a host of political impediments to new legislation actually being passed in a timely fashion.

In short, even though the House theoretically holds the initial constitutional authority to originate taxing legislation, the House is unlikely to systematically safeguard that power. In reality, once the President has claimed broad tariff powers, safeguarding the congressional taxing power and in particular the House origination power will largely fall to the courts.

D. The Limits of Public "Enforcement"

What about the ability of "the public" to put pressure on the House to take its constitutional role of origination more seriously? As Section II.A discussed, the existence and placement of the Origination Clause is a statement about the structure of government and the expectation that the House—the chamber closest to the people—will think seriously about legislation that effectively constitutes taxation and not merely act as a rubber stamp.[100] Some commenters have noted that if the House fails to fully embrace its constitutional role in drafting revenue-raising legislation, then the Origination Clause will continue to be undermined and diminished. For example, in reflecting on the constitutional balance of powers in the government, the Heritage Foundation argued that "Members of the House of Representatives should be more zealous in protecting this exclusive

---

the strength of this precedent, and its application to the Origination Clause, is unclear. For an examination of the standing of Congress to sue, see Vicki C. Jackson, *Congressional Standing to Sue: The Role of Courts and Congress in U.S. Constitutional Democracy,* 93 IND. L.J. 845 (2018).

100. *See supra* notes 50–55 and accompanying text (explaining reasons for placing revenue bill origination in the House).

prerogative."[101] Testifying before a House committee, against the backdrop of the ACA debates, the executive director of the Pacific Legal Foundation (which litigates for limited government) contended: "Like the guarantee of free speech, the Origination Clause guarantees a deeply-ingrained, individual right (which may rise to the level of a fundamental right that is essential to Anglo-American ordered liberty) and not just a political prerogative of House members to enforce or not as they choose."[102] In the *Learning Resources* case, thirty-seven briefs were filed on behalf of plaintiffs objecting to the tariffs and only six on behalf of the government.[103]

However, these sorts of rallying cries of constitutional obligation have not seemed to make a notable impact on how tax legislation is made in Congress. Part of the reason is that in order to have standing to challenge the legislation, the plaintiff must have suffered actual injury and cannot just submit abstract complaints.[104] Another reason is that, under the "enrolled bill" approach to evaluating Origination Clause violations, the Supreme Court will generally only look at whether the originating bill was a House bill and will not interrogate the source of the underlying provision further.[105] Thus, there is no apparent incentive for the House to do any additional safeguarding work in response to (or in anticipation of) public outcry beyond ensuring that it originates the initial bill as a matter of form.

In short, the constitutional effect of the Origination Clause remains a soft one because the Clause is not understood to demand anything more from the House than starting the legislation. Actual, meaningful evaluation and assessment of legislation in the House need not occur or appear to occur in order to satisfy the Constitution. Members of the House can be exhorted to take this power more seriously, but the Constitution only requires mechanical compliance. The Origination Clause may function as a way for commentators to frame and focus their dissatisfaction, but preferences would ultimately need to be expressed at the ballot box to have real effect.

---

101. Erik M. Jensen, *Hands Off My Purse! Why Money Bills Originate in the House*, HERITAGE FOUND. (Jan. 27, 2011), https://www.heritage.org/the-constitution/report/hands-my-purse-why-money-bills-originate-the-house [https://perma.cc/36K9-WA3P]. Flipping the interpretation of House inaction, Elizabeth Wydra of the Constitutional Accountability Center suggested that the fact that "no member [of the House] raised a blue-slip objection to the ACA" while not "dispositive of the constitutional question . . . does further support the argument that the ACA satisfies the requirements of the Origination Clause." *Origination Clause Hearing*, *supra* note 54, at 36–47 (testimony of Elizabeth B. Wydra, Chief Couns., Const. Accountability Ctr.).

102. *Origination Clause Hearing*, *supra* note 54, at 57 (testimony of Todd F. Gaziano, Senior Fellow in Const. L., Pac. Legal Found.).

103. *See Learning Resources, Inc. v. Trump (Tariffs)*, SCOTUSBLOG, https://www.scotusblog.com/cases/case-files/learning-resources-inc-v-trump/ [https://perma.cc/H5XK-WHU9].

104. *See, e.g.*, TransUnion LLC v. Ramirez, 594 U.S. 413, 422–24 (2021) (explaining that standing requires a concrete injury, causation, and redressability).

105. *See supra* notes 64–68 and accompanying text (discussing the enrolled bill doctrine).

IV. THE ORIGINATION CLAUSE AS A STATUTORY INTERPRETATION TOOL

In this Part IV, we argue that despite its weakness as a constitutional constraint, the Origination Clause retains power as a tool of statutory interpretation.

A. Leveraging the Meaning of Revenue Raising in Origination Clause Case Law

Even though the Origination Clause offers no constitutional constraint on presidential tariff powers, it supports arguments grounded in statutory interpretation for limiting presidential tariff action. Central to this analysis is recognition that while some tariffs are "revenue raising," and thus subject to the Origination Clause, other tariffs might not be revenue raising. Where a President seeks to impose a tariff that is "revenue raising," the authorizing statute must meet two requirements: First, it must authorize the President to impose tariffs (as required by the Taxing Power limits of the Constitution), and second, the statute itself must be a "revenue-raising" statute that is subject to the Origination Clause's requirements (in order to conceivably delegate revenue-raising power to the President).

If a court simply wished to hold that a statute does not permit the president to impose tariffs *at all*, then it would just have to find that the statute did not authorize tariffs as required by the Taxing Power (i.e., the first requirement above), and no further inquiry would be needed. But if a court wanted to draw distinctions in future cases between different kinds of tariffs—finding, for example, that narrower tariffs are authorized by a statute but more expansive ones are not—then the second inquiry (regarding whether the underlying statute is a "revenue-raising" statute capable of delegating broad rather than narrow tariff powers)—would become important. It is here that the Origination Clause case law can aid in the statutory interpretation task.

Take, for example, the case of a statute that authorizes the President to impose narrow, trade-specific tariffs to address a specified problem. The President cannot rely on said statute to justify imposition of broad and general revenue-raising tariffs, because only a revenue-raising statute can authorize such broad tariffs. The President cannot take a non-revenue-raising statute passed by Congress and read into it a grant of broad revenue-raising power. Any statute that grants revenue-raising powers to the President must be: (1) a revenue-raising statute, (2) that was initiated in the House—both elements are required. Our statutory interpretation argument is that presidential revenue raising through the imposition of a tariff is valid only if based on a revenue-raising statute, and that Origination Clause case law provides the interpretive tools needed to determine whether a statute is a revenue-raising statute. That case law reveals, for example, that a statute that collects a fee for a special purpose is not a revenue-raising statute, while a statute that collects money for an unspecified purpose and for the general Treasury fund is a revenue-raising statute.

This type of analysis was used in both the Supreme Court's *Munoz-Flores* decision[106] and in the D.C. Circuit's *Sissel* decision[107] in determining whether a statute was revenue raising. Our view is that the definition of a revenue-raising statute as developed in those cases can help guide the interpretation of statutes that are used by the President to assert revenue-raising powers and that a President can only have revenue-raising power if the statute is a revenue-raising statute that has delegated such power.[108] In *Munoz-Flores*, for example, the Court concluded that a special assessment imposed to support a crime victim fund did not raise revenue.[109] The objective of the statute and use of funds are the focus of the *Munoz-Flores* inquiry, consistent with precedent holding that taxes specifically raised to pay for railroad construction[110] or establish a national currency[111] did not raise revenue within the meaning of the Origination Clause. The Court wrote that "a statute that creates a particular governmental program and that raises revenue to support that program, as opposed to a statute that raises revenue to support government generally, is not a 'Bil[l] for raising Revenue' within the meaning of the Origination Clause."[112] In the case of the crime victim fund statute in *Munoz-Flores*, "'There was no purpose by the act or by any of its provisions to raise revenue to be applied in meeting the expenses or obligations of the Government.'"[113]

Similarly, in *Sissel,* the D.C. Circuit concluded that the Affordable Care Act was not a revenue-raising statute.[114] Looking at prior efforts to

---

106. *See supra* text accompanying notes 69–71 (discussing United States v. Munoz-Flores, 495 U.S. 385 (1990)).

107. *See supra* text accompanying notes 72–75 (discussing Sissel v. U.S. Dep't of Health & Hum. Servs., 799 F.3d 1035 (D.C. Cir. 2015)).

108. *See* SATURNO, ORIGINATION CLAUSE INTERPRETATION AND ENFORCEMENT, *supra* note 56, at 9 (reviewing case law).

109. *See Munoz-Flores*, 495 U.S. at 397–400.

110. *See* Millard v. Roberts, 202 U.S. 429, 435–37 (1906) (concluding that taxes in case did not raise revenue).

111. *See* Twin City Bank v. Nebeker, 167 U.S. 196, 202–03 (1897) (holding that a tax payable by banks to support the costs of establishing a national currency did not raise revenue within the meaning of the Origination Clause).

112. *See Munoz-Flores*, 495 U.S. at 398.

113. *Id.* (quoting *Nebeker*, 167 U.S. at 203).

114. Sissel v. U.S. Dep't Health & Hum. Servs., 799 F.3d 1035, 1044–49 (D.C. Cir. 2015) (Rogers, Pillard, and Wilkins, JJ., concurring in the denial of reh'g en banc).

determine the reach of the Origination Clause, the court observed that "in three separate cases spanning more than a century, [the Supreme Court] held that the variable controlling whether a statutory provision falls within the ambit of the Origination Clause is whether raising revenue for the general Treasury is that provision's primary purpose."[115] A statute that lacks a revenue-raising purpose is neither a revenue-raising statute subject to Origination Clause constraints nor one from which the President can extract revenue-raising powers.

These statutory interpretation insights regarding the determination of whether a statute is "revenue raising" for purposes of applying the Origination Clause can be applied to analyze tariffs such as those at issue in *Learning Resources*. There, the President claimed revenue-raising authority, meaning the authority to collect money for unspecified purposes for the general fund of the federal government.[116] The *Learning Resources* tariffs, including the 10 percent across-the-board tariff imposed via the April 2025 Executive Order, were clearly envisioned as revenue raising within the meaning of Origination Clause case law. The administration advertised its tariffs as capable of collecting hundreds of billions of dollars annually,[117] which is consistent with independent estimates.[118] These amounts were set to go into the federal government's general fund with no specified spending purpose,[119] and tariff revenues were used in congressional negotiations to justify other tax cuts.[120] In addition, the April 2025 10 percent across-the-board tariff generally was not reduced in

---

115. *See id.* at 1036 (citing *Munoz-Flores*, *Nebeker*, and *Millard*).

116. The other instance of a tariff imposed under an emergency statute, which is the 10 percent baseline tariff imposed for four months in 1974 by President Nixon to incentivize other nations to drop their currency pegs, does not necessarily qualify as "revenue raising." It was imposed for a narrower purpose compared to the tariffs imposed in April 2025. *See* United States v. Yoshida Int'l, Inc., 526 F.2d 560, 573–77 (C.C.P.A. 1975).

117. Interview by Tucker Carlson with Scott Bessent, *supra* note 28 (quoting Bessent as estimating tariff revenue of "$300 billion to $600 billion a year").

118. *State of U.S. Tariffs: September 26, 2025*, BUDGET LAB (Sept. 26, 2025), https://budgetlab.yale.edu/research/state-us-tariffs-september-26-2025 [https://perma.cc/X2YU-US73] (estimating the revenue effect of all tariffs at about $2.5 trillion over ten years on a static basis and $2 trillion over ten years on a dynamic basis). The IEEPA tariffs contributed the largest portion of this amount. *See* Erica York & Alex Durante, *Tracking the Impact of the Trump Tariffs & Trade War*, TAX FOUND. (Mar. 13, 2026), https://taxfoundation.org/research/all/federal/trump-tariffs-trade-war/ [https://perma.cc/UN8X-SZBQ] (estimating IEEPA tariffs' revenue contribution at $1.7 trillion over ten years).

119. *See* Riley Beggin, *Here's Where the Money from Trump's Tariffs Will Go*, WASH. POST (Aug. 7, 2025), https://www.washingtonpost.com/business/2025/08/07/trump-tariffs-revenue/ [https://perma.cc/W3PU-DN84] (noting that the tariff "money goes into the general fund, which can be used however Congress designates").

120. *See* Rubin, *supra* note 28 (reporting President's statement linking tariff increases to income tax cuts); Interview by Tucker Carlson with Scott Bessent, *supra* note 28 (quoting Bessent as explaining that although the legislative budgeting process would not give "credit for [presidential] tariffs in any bill," tariffs could nevertheless pay for legislative tax breaks such as "no tax on tips").

negotiation.[121] Rather, the 10 percent across-the-board tariff was treated as a permanent part of the taxing system of the federal government.

The President reinforced this understanding of the April 2025 tariffs as revenue raising by imposing a comparable replacement tariff on the same day the Supreme Court struck down the April 2025 tariffs.[122] In this second round, he used a different statute, Section 122, which allows a tariff of up to 150 days and up to 15 percent to address a balance-of-payments issue.[123] Meanwhile, the administration is also pursuing additional tariffs under Sections 232 and 301, presumably with the intent of replacing the 150-day tariff by the time of its expiration.[124]

Applying the Origination Clause case law analysis to the *Learning Resources* tariffs reveals that IEEPA is not a revenue-raising statute. If IEEPA had happened to originate in the Senate rather than the House, it would not have been found to be subject to, or to violate, the Origination Clause, because IEEPA does not contemplate raising revenue at all. Its listed powers do not include the power to impose tariffs or taxes.

The Origination Clause revenue-raising analysis can help differentiate between statutes authorizing narrow tariff powers and those authorizing broad, revenue-raising powers. For instance, the Court could have concluded (though it did not explicitly do so) that even if IEEPA did authorize the President to impose temporary tariffs[125] in some

121. The U.S. treaty with Canada and Mexico provides a pre-existing exemption to the 10 percent across-the-board tariff, and there have been isolated examples of negotiated reductions for a few product categories with a few trading partners. *See* Michael Lowell et al., *Trump 2.0 Tariff Tracker*, REEDSMITH: TRADE COMPLIANCE RES. HUB (Mar. 13, 2026), https://www.tradecomplianceresourcehub.com/2026/03/13/trump-2-0-tariff-tracker/ [https://perma.cc/9GUG-C4V8] (noting USMCA exemptions but few others). The references in the tracker to 0 percent rates for Japan and the European Union are limited exemptions and not broad exemptions to the 10 percent rate. *See* Implementing the United States-Japan Agreement, Exec. Order No. 14,345, 90 Fed. Reg. 43535 §§ 4–5 (Sept. 4, 2025) (reducing rate to zero for aerospace products and giving Treasury Secretary authority to reduce rate to zero for certain generic pharmaceuticals and ingredients); Modifying the Scope of Reciprocal Tariffs and Establishing Procedures for Implementing Trade and Security Agreements, Exec. Order No. 14,346, 90 Fed. Reg. 43737 (Sept. 5, 2025) (anticipating the possibility of a zero rate under agreements with EU countries for "products that cannot be grown, mined, or naturally produced in the United States or grown, mined, or naturally produced in sufficient quantities in the United States to satisfy domestic demand; certain agricultural products; aircraft and aircraft parts; and non-patented articles for use in pharmaceutical applications").

122. Proclamation No. 11012, 91 Fed. Reg. 9339 (Feb. 20, 2026).

123. *See* Trade Act of 1974, Pub. L. No. 93-618, § 122, 88 Stat. 1978, 1987–89 (1975), *codified at* 19 U.S.C. § 2132. This statute originated in the House. *See* H.R. 10710, 93d Cong. (1973).

124. *See* Bade, *supra* note 30 (reporting unfair trade practice investigations targeting about sixty nations under Section 301 and consideration of tariffs under Section 232).

125. The *Learning Resources* Court is not quite clear about whether IEEPA might ever authorize any tariffs. Its decision includes both narrower statements of its holding, for instance, that IEEPA does not "grant the President an expansive peacetime tariff power," Learning Res., Inc. v. Trump, 146 S. Ct. 628, 645 (2026), and the broader statement that "IEEPA does not authorize the President to impose tariffs," *id.* at 646.

circumstances, like those in the *Yoshida* case,[126] IEEPA did not authorize broad and sweeping peacetime tariffs with the objective of raising revenue for the Treasury's general fund.

In other words, even if the Supreme Court *had* concluded that IEEPA authorized some tariffs, the right reading—and the one supported by our Origination Clause statutory analysis—would be that IEEPA authorizes only tariffs to specifically address an emergency, rather than general purpose, revenue-raising tariffs. A special-purpose tariff authorized under IEEPA would be akin to taxes authorized for the specific purposes of supporting a national currency, railroad construction, or a crime victims' fund. None of these provisions raise revenue within the meaning of the Origination Clause.

The Origination Clause can reveal a mismatch between a non-revenue-raising statute (like IEEPA) and the extremely revenue-raising purpose of the President's tariff actions. The Origination Clause offers courts a way to link their statutory interpretation analysis to a disconnect between a narrow congressional statutory authorization and a sweeping power asserted by the President to impose a measure like the across-the-board April 2025 10 percent baseline tariff, which was undertaken with a core, publicly stated purpose of raising revenue for the general Treasury fund and which has been presented as a permanent part of the federal government's general revenue scheme.[127]

B. *Congressional Process Indicators of a Statute's Revenue-Raising Meaning*

The argument that IEEPA is not a revenue-raising statute is also supported by the fact that such statutes generally emerge from a specific congressional tax legislative process. Though this observation is not strictly an Origination Clause point, it reflects the same heightened attention that the Constitution bestows on the taxing power. The congressional tax legislative process not only requires Congress to originate revenue bills through the House but also follows specific practices, norms, and steps. If Congress had used the typical congressional tax legislative process for enacting revenue bills to enact a statute like IEEPA, there would be a

---

126. *See* United States v. Yoshida Int'l, Inc., 526 F.2d 560, 573–77 (C.C.P.A. 1975) (analyzing 10 percent baseline tariff imposed for several months to encourage other countries to drop their currency pegs).

127. *See supra* text accompanying notes 116–24 (discussing revenue-raising nature of Trump tariffs such as the 10 percent across-the-board baseline tariff).

stronger argument that the statute is one that authorizes the President to raise revenue for the Treasury's general fund.

IEEPA, for example, did not follow any of these tax legislative process norms or requirements but rather arose from a bespoke congressional study of presidential emergency powers. The effort began with a 1976 study by a subcommittee of the Senate Committee on International Relations, which considered how to restrict the broad emergency powers claimed by successive presidents from Franklin Roosevelt to Richard Nixon.[128] IEEPA was part of a group of reforms that emerged as a result of that study.[129] IEEPA did not go through the process followed by revenue bills. Instead, after IEEPA was introduced in the House in June 1977, it was taken up by the House Committee on International Relations and, upon passage of the revised bill in the House in July 1977, was referred to the Senate Committee on Banking, Housing, and Urban Affairs, with the Senate passing a revised bill in October 1977.[130]

In contrast, at the time IEEPA was enacted, the process for considering revenue bills featured participation by the House Ways and Means Committee, the Senate Finance Committee, the Joint Committee on Taxation (JCT), and the Secretary of the Treasury.[131] The administration frequently initiated the consideration of tax proposals by bringing them to the attention of the Ways and Means Committee, and both public hearings and nonpublic executive sessions involving Ways and Means, the JCT, and the Treasury were typically used to deliberate on proposals.[132] Even before the modern era in which passing tax legislation via budget reconciliation

---

128. SUBCOMM. ON INT'L TRADE AND COM. OF THE H. COMM. ON INT'L RELS., 94TH CONG., TRADING WITH THE ENEMY: LEGISLATIVE AND EXECUTIVE DOCUMENTS CONCERNING REGULATION OF INTERNATIONAL TRANSACTIONS IN A TIME OF DECLARED EMERGENCY (Comm. Print 1976).

129. CHRISTOPHER A. CASEY, JENNIFER K. ELSEA & LIANA W. ROSEN, CONG. RSCH. SERV., R45618, THE INTERNATIONAL EMERGENCY ECONOMIC POWERS ACT: ORIGINS, EVOLUTION, AND USE 10 (2025).

130. *H.R. 7738 – International Emergency Economic Powers Act*, CONGRESS.GOV, https://www.congress.gov/bill/95th-congress/house-bill/7738/all-actions [https://perma.cc/J8YR-M26G]. In November and December, the House and Senate agreed on certain amendments to produce a conformed bill, which was then enrolled and signed by the President. *Id.*

131. Ronald A. Pearlman, *The Tax Legislative Process: 1972–1992*, 57 TAX NOTES 939 (1992); Bernard M. (Bob) Shapiro, The Last 50 Years: The Evolving Role of the Joint Committee Staff in the Tax Legislative Process 2–6 (Feb. 2016) (unpublished draft), https://capitolhistory.org/wp-content/uploads/2016/02/USCHS-History-Role-Joint-Committee-Taxation-Shapiro.pdf [https://perma.cc/T84F-3WNW].

132. *See* Michael J. Graetz, *Reflections on the Tax Legislative Process: Prelude to Reform*, 58 VA. L. REV. 1389, 1395–97 (1972) (describing the process for enacting tax legislation); *see also* Stanley S. Surrey & Paul R. McDaniel, *The Tax Expenditure Concept: Current Developments and Emerging Issues*, 20 B.C. L. REV. 225, 300–19 (1979) (detailing the legislative process for the Tax Reform Act of 1976, the Tax Reduction and Simplification Act of 1977, the Energy Tax Act of 1978 and the Revenue Act of 1978).

became common practice,[133] revenue estimates prepared by JCT staff and Treasury estimators—which generally showed how the provisions of the statute would affect the Treasury's general fund—were considered and discussed as part of the legislative process.[134] After House consideration, the passed bill would go to the Senate, where the Senate Finance Committee would hold additional hearings and make additional amendments. After Senate passage, the House and the Senate used a conference process, which also involved Treasury staff, to arrive at a final version of the bill to pass and present to the President.

The moment of IEEPA's passage in 1977 was a transitional moment in congressional procedure for tax legislation, since it occurred after the passage of the Congressional Budget Act of 1974[135]—which contains the modern process of budget reconciliation—but before Congress had adopted the new reconciliation procedures into its working norms.[136] A key element of the transitional moment was the use of revenue estimation, which had become part of the contemporaneous process in practice and which was

133. MEGAN S. LYNCH, CONG. RSCH. SERV., R40480, BUDGET RECONCILIATION MEASURES ENACTED INTO LAW SINCE 1980, at 1 (2025) (summarizing "the 24 budget reconciliation measures enacted into law since 1980, when reconciliation procedures were first used by both chambers"); Rebecca M. Kysar, *The New Tax Legislative and Regulatory Process*, 73 NAT'L TAX J. 1135 (2020); Victor Fleischer, *The State of America's Tax Institutions,* 81 LAW & CONTEMP. PROBS., no. 2, 2018, at 7 (analyzing the legislative process leading up to the December 2017 tax legislation, TCJA); Michael Doran, *Legislative Entrenchment and Federal Fiscal Policy,* 81 LAW & CONTEMP. PROBS., no. 2, 2018, at 27 (examining in the context of a legislative entrenchment argument, detailing the federal budget process established in 1974, and the multiplicity of committees engaged in the tax legislative process); Rebecca M. Kysar, *Tax Law and the Eroding Budget Process*, 81 LAW & CONTEMP. PROBS., no. 2, 2018, at 61, 63–70 (2018) (reviewing the history of reconciliation and the influence of the Byrd rule in tax policy making); Ellen P. Aprill & Daniel J. Hemel, *The Tax Legislative Process: A Byrd's Eye View*, 81 LAW & CONTEMP. PROBS., no. 2, 2018, at 99 (2018) (exploring the powerful and often problematic impact of the Byrd rule in tax legislation); Lawrence Zelenak, *Leaving it up to Treasury: Congressional Abdication on Major Policy Issues in the Early Years of the Income Tax*, 81 LAW & CONTEMP. PROBS., no. 2, 2018, at 137, 137–38 (2018) (reflecting on the congressional shift to drafting more detailed tax legislation rather than leaving it to Treasury and IRS as was the practice prior to World War II); George K. Yin, *Crafting Structural Tax Legislation in a Highly Polarized Congress*, 81 LAW & CONTEMP. PROBS., no. 2, 2018, at 241, 255–61 (2018) (comparing the changing roles of committees and committees chairs in the tax legislative process and its impact in the context of a polarized congress).

134. *See* Shapiro, *supra* note 131, at 5 (noting that both JCT staff and Treasury Department revenue estimators prepared estimates); Jerry Tempalski, *Revenue Effects of Major Tax Bills* (U.S. Dep't of the Treasury, Off. of Tax Analysis, Working Paper No. 81, 2006), https://home.treasury.gov/system/files/131/WP-81.pdf [https://perma.cc/WYE4-BHP2] (using revenue estimates of tax bills since 1940 to measure relative bill size over time); JERRY TEMPALSKI, U.S. DEP'T OF THE TREASURY, REVENUE EFFECTS OF MAJOR TAX BILLS: UPDATED TABLES FOR ALL 2012 BILLS (2013), https://home.treasury.gov/system/files/131/WP81-Table2013.pdf [https://perma.cc/54HJ-FHTL].

135. Congressional Budget Act of 1974, Pub. L. No. 93-344, 88 Stat. 297 (codified at 2 U.S.C. §§ 601–688).

136. *See* Surrey & McDaniel, *supra* note 132, at 300–19 (detailing the legislative process for the Tax Reform Act of 1976, the Tax Reduction and Simplification Act of 1977, the Energy Tax Act of 1978 and the Revenue Act of 1978).

formalized and required in the Congressional Budget Act. IEEPA followed neither the contemporaneous procedure nor the modern procedure.[137] Instead, no budget estimates were produced. The only relevant legislative history reference is a statement from the Congressional Budget Office stating that the legislation would have no revenue effects.[138]

That IEEPA did not go through either the contemporaneous tax legislative process or the modern budget reconciliation process strongly suggests that Congress in no way viewed it as revenue legislation.[139] We do not claim that specific tax committees and estimates *must* be involved in enacting a piece of legislation for it to authorize taxes or tariffs. But we do suggest that where—as is the case with statutes like IEEPA—a court's task is to determine the meaning of a statute in the absence of *any* statutory text indicating that the statute is a revenue statute, the fact that the statute also has none of the congressional-process hallmarks of revenue legislation supports the statutory interpretation result that the statute does not and may not raise revenue. If the statute had mentioned taxes or tariffs, set a maximum rate, or even set a tax base, the case would be stronger for interpreting the statute as revenue raising based on its text.[140] But this was not the case with IEEPA.

When a court considers presidential tariff authorization under other trade statutes, it can similarly consider whether such statutes bear tax legislative process hallmarks. This may involve mixed evidence. For instance, some trade statutes have some tax legislative process indicators but not all.[141] Nevertheless, consideration of tax legislative procedure, while not determinative, can help inform whether a statute authorizes revenue raising.

---

137. *See* TORI GORMAN, CONG. RSCH. SERV., R48444, THE RECONCILIATION PROCESS: FREQUENTLY ASKED QUESTIONS 5–6 (2026), https://www.congress.gov/crs_external_products/R/PDF/R48444/R48444.5.pdf [https://perma.cc/SA3M-EY5B] (explaining revenue estimation, including modern application of the "Byrd rule" to ensure that reconciliation bills only relate to spending and revenue).

138. *See* S. REP. NO. 95-466, at 6–7 (1977) (stating that the Congressional Budget Office estimated no budgetary impact from the passage of IEEPA to supersede part of the Trading with the Enemy Act of 1917).

139. *See* Learning Res., Inc. v. Trump, 146 S. Ct. 628, 677–79 (2026) (Jackson, J., concurring) (considering IEEPA's legislative history).

140. *See supra* Section IV.A (observing that under the Origination Clause case law, a statute that collects a special fee for a special purpose is not a revenue-raising statute, while a statute that collects money for an unspecified purpose and for the general Treasury fund is a revenue-raising statute).

141. For instance, consideration of the Trade Act of 1974 involved the Senate Finance Committee and the House Ways and Means Committee, but not the Joint Committee on Taxation or any revenue estimates. *See* STAFFS OF S. COMM. ON FIN. & H. COMM. ON WAYS & MEANS, 93D CONG., TRADE ACT OF 1974: SUMMARY OF THE PROVISIONS OF H.R. 10710 (Comm. Print 1974). *See also* IRWIN, *supra* note 31, at 549–55 (describing the Trade Act of 1974 and noting the involvement of the House Ways and Means Committee).

C. The Major Questions Doctrine and the Origination Clause

In the context of presidential tariff powers, this Article has briefly discussed the constitutional nondelegation doctrine, which would suggest that Congress cannot delegate the power to impose tariffs. But as discussed above in Part III, this doctrine has almost never prompted a court to hold a statute unconstitutional, and the Court has recently rejected an exceptionalist argument for tax delegation grounded in the Taxing Power Clause or the Origination Clause.[142] In addition, a more stringent nondelegation doctrine for tax could cause significant practical problems by questioning existing administrative practices at Treasury and the IRS, including the use of the broadly worded Section 7805 of the Internal Revenue Code to support a large body of regulations and administrative guidance.

This Article has also emphasized the contribution that the Origination Clause can make to the statutory interpretation project of determining whether certain trade statutes authorize the President's broad, sweeping tariffs. This more modest option of statutory interpretation underlies our argument in Sections IV.A and IV.B that (1) the Origination Clause could have helped courts decide that IEEPA's authorization to "regulate" "importation" in an "emergency" does not delegate revenue-raising power to impose broad tariffs to the President and that (2) the Clause might help future courts analyze whether tariff authorization under other trade statutes delegates revenue-raising power. In the statutory interpretation argument, as explained above, the contribution of the Origination Clause is to help a court identify whether a trade statute is a revenue-raising statute, and thus whether that statute could delegate broad, revenue-raising power to the President.

There is a third pathway of analysis in these cases, which is the major questions doctrine. When a court finds that a claimed grant of authority is "extraordinary," the court can apply the MQD to require a clear statement, not "merely plausible textual basis," that "Congress in fact meant to confer the power the agency has asserted."[143] For instance, in the tax context, the Supreme Court has held that "billions of dollars in spending" represented by Affordable Care Act tax credits made the interpretation of the tax credit provision a major question.[144]

---

142. *See supra* Section III.B (discussing FCC v. Consumers' Rsch., 606 U.S. 656 (2025)).

143. West Virginia v. EPA, 597 U.S. 697, 722–23 (2022).

144. King v. Burwell, 576 U.S. 473, 485–86 (2015) (finding that, given the scale of spending at issue, the legal question was one of "deep 'economic and political significance' that is central to this

The MQD has been described as a sub-constitutional[145] "power canon"[146] that allows courts to limit executive branch power without accepting the higher stakes of the constitutional nondelegation doctrine. When courts apply the MQD, they offer a variety of reasons why a claimed grant of authority might be "extraordinary," often citing the importance of an action in the economy.[147] But their reasons go further than that and have involved, for instance, concerns about federalism and criminal penalties.[148]

There are similarities between the MQD and the Origination Clause argument in tariff cases. Both distinguish between narrower tariff actions and broader tariff actions. The broader and more permanent the tariff action, the more likely that it is an extraordinary, or major, policy for purposes of MQD analysis. Likewise, the broader and more permanent the tariff action, the more likely that it raises revenue for the Treasury's general fund for purposes of Origination Clause analysis. Chief Justice John Roberts highlighted this similarity in his *Learning Resources* opinion when he relied on tariff revenue estimates to justify his discussion of the MQD[149] (though the MQD did not appear in the portion of his opinion that constituted the Court's opinion).[150] Justice Gorsuch put the MQD at the center of his *Learning Resources* concurrence,[151] and Justice Amy Coney Barrett called it part of textualist statutory interpretation.[152] But despite the support of these three Justices, Justice Kagan, Justice Sonia Sotomayor, and Justice

---

statutory scheme; had Congress wished to assign that question to an agency, it surely would have done so expressly").

145. *See, e.g.*, Mila Sohoni, The Supreme Court, 2021 Term – Comment, *The Major Questions Quartet*, 136 HARV. L. REV. 262, 313 (2022) (linking the MQD's clear statement rule to a judgment about separation of powers).

146. *See* Lisa Heinzerling, *The Power Canons*, 58 WM. & MARY L. REV. 1933, 1954–56 (2017) (noting refusal to apply *Chevron* in *King*).

147. *See, e.g.*, *West Virginia*, 597 U.S. at 724 (referring to action that would "substantially restructure the American energy market"); *King*, 576 U.S. at 485–86 (referring to "billions of dollars in spending" due to ACA tax credits); FDA v. Brown & Williamson Tobacco Corp., 529 U.S. 120, 159–60 (2000) (referring to efforts to regulate and perhaps prohibit the large tobacco industry).

148. *See* Ala. Ass'n of Realtors v. Dep't of Health & Hum. Servs., 594 U.S. 758, 764 (2021) (referring to the state law nature of landlord-tenant law and to potential criminal penalties as well as to the millions of tenants and tens of billions of dollars of rental assistance implicated by eviction moratorium).

149. *See* Learning Res., Inc. v. Trump, 146 S. Ct. 628, 641 (2026) (noting "projections that the tariffs will reduce the national deficit by $4 trillion"). *See also* V.O.S. Selections, Inc. v. Trump, 149 F.4th 1312, 1335–36 (Fed. Cir. 2025) (applying MQD because taxing power is a "core Congressional power and because of the sizable revenue anticipated from tariffs"), *aff'd sub nom. Learning Res.*, 146 S. Ct. 628.

150. *See Learning Res.*, 146 S. Ct. at 646 (writing that the President asserted "extraordinary power" and "must identify clear congressional authorization").

151. *See id.* at 646 (Gorsuch, J., concurring) (calling the asserted tariff power "an extraordinary power").

152. *See id.* at 672 (Barrett, J., concurring) (treating the MQD as part of textualism).

Ketanji Brown Jackson disagreed with the application of the MQD and argued instead that the Court only needed to apply ordinary statutory interpretation to reach the result.[153] Thus, a majority of the Court did not support applying the MQD in *Learning Resources*.

Further, as the principal dissent highlighted, another and perhaps more important MQD question also divided the Court. The dissent emphasized that two constitutional elements—Article I, regarding legislative power, and Article II, regarding executive power—point in opposite directions in terms of whether or not the MQD is applicable. Justices Kavanaugh, Alito, and Thomas took the Article II side, and Justice Kavanaugh wrote that the Constitution does not require a clear statement from Congress to authorize the President to exercise foreign affairs and national security powers, including with respect to economic policy.[154]

Our Origination Clause contribution can help courts navigate these potential conflicts. By strengthening the ordinary statutory interpretation analysis of whether a trade statute authorizes the President to impose a sweeping tariff, the Origination Clause may help courts to sidestep the problematic Article I/Article II conflict presented by the MQD.[155] While the Supreme Court could take the Article I side and hold that the MQD requires a clear statement of congressional intent in tax and tariff situations, this approach holds risks. It could jeopardize, for instance, both the discretionary authority of Treasury and the IRS in offering taxpayers needed regulations and guidance[156] and the ability of a President to negotiate free trade agreements, as has been done for decades.[157] Alternatively, the Supreme Court could take the Article II side and hold that the MQD does not apply because of the foreign affairs context of tariffs. But this path also holds risks. It would increase the President's power to impose taxes and make other domestic economic policy decisions under the guise of a foreign affairs or foreign affairs-adjacent power, which conflicts with the Constitution's

153. *See id.* at 675 (Kagan, J., concurring in part and concurring in the judgment) ("The use of a clear-statement rule here is unnecessary because ordinary principles of statutory interpretation lead to the same result.").

154. *See id.* at 715 (Kavanaugh, J., dissenting) (arguing that the MQD does not apply "in the foreign policy and national security fields").

155. Ordinary statutory interpretation may have separation-of-powers implications, but they are not as far-reaching as those presented by nondelegation. *See, e.g.*, John F. Manning, *Textualism as a Nondelegation Doctrine*, 97 COLUM. L. REV. 673, 696–97 (1997) (arguing that textualism represents a constitutional claim about an Article I requirement that Congress communicate its intentions through statutory text).

156. *See* I.R.C. § 7805 (granting the Secretary of the Treasury the authority to prescribe and enforce rules necessary to implement the income tax).

157. *See* Meyer & Sitaraman, *supra* note 20, at 90 (expressing concern that the MQD could interfere with economic policy implemented by the executive branch); Eichensehr & Hathaway, *supra* note 20, at 1873–78 (expressing concern that MQD would interfere with national security interests).

careful placement of the taxing power in the hands of Congress, and in particular in the originating hands of the House.

To avoid not only a nondelegation analysis but also an MQD analysis, courts deciding the scope of the President's authority in tariff cases should make the most of ordinary statutory interpretation. They should avoid holding that special clear statement rules apply where taxing or tariff powers are concerned. *Learning Resources* supports using statutory interpretation to determine whether a trade law statute authorizes broad, revenue-raising tariffs. The Origination Clause can strengthen and enrich this statutory analysis task.

CONCLUSION

Presidentially imposed tariffs are an unprecedented use of executive power in U.S. tax law. They appear to contradict the Origination Clause and the Taxing Power Clause, which place taxing power in the hands of Congress rather than the President. Yet the Supreme Court has held that these tax clauses in the U.S. Constitution do not require a special nondelegation doctrine for tax. In addition, these clauses do not necessarily require courts to apply a clear statement rule under the major questions doctrine.

Nevertheless, the Origination Clause analysis endorses the result reached by the Court in *Learning Resources*: that IEEPA did not authorize the presidential tariffs imposed under it in 2025. The Origination Clause supports the Court's holding, based on statutory interpretation, that the President lacked the authority he claimed. Origination Clause case law reveals that IEEPA is not a revenue-raising statute and thus does not authorize the President to impose tariffs that raise revenue. After *Learning Resources*, as this law continues to develop, the Origination Clause can also help future courts decide whether other trade statutes authorize the President to raise revenue by imposing tariffs.