

NALC Mid-South Agricultural & Environmental Law Conference: Supreme Court & Ag Litigation Update

Travis Cushman | American Farm Bureau Federation®
Deputy General Counsel, Litigation & Public Policy
travisc@fb.org | (202) 406-3618 (o) | (434) 227-2224 (m)

Outline

- SCOTUS Trends + Trump Admin
- Recently Decided
- Pending
- Notable Lower Court Litigation







Thomas



Gorsuch



Alito



Roberts



Kavanaugh



Barrett



Kagan

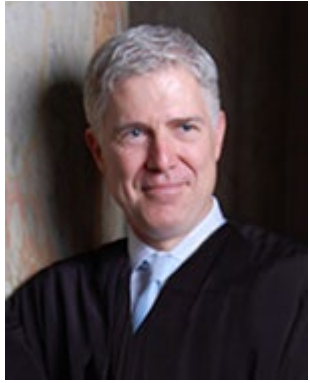


Sotomayor



Jackson

Fractured Majority (2-1-2)



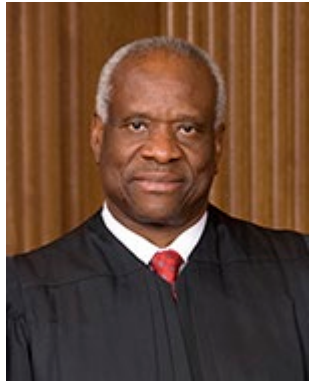
Gorsuch



Barrett



Sotomayor



Thomas



Kagan

Dissent



Roberts



Alito



Kavanaugh



Jackson



Constitution

(provides a separation of powers)

Article I



Legislative
(makes laws)

Article II



Executive
(carries out laws)

Article III



Judicial
(evaluates laws)

SCOTUS Trends

- Recalibrating constitutional role of 3 branches
- Standing tightening
- State patchwork regulations
- Preemption
- Shadow/Emergency Docket



Trump II

Trump's Success Rate Increases on Appeal

Overall, the administration has experienced losses twice as much as it's enjoyed victories, but its success rate increases dramatically for the cases it appeals.

Court	Wins	Losses	Win percentage
U.S. District Courts	52	187	21.8%
U.S. Courts of Appeal	22	21	51.2%
U.S. Supreme Court	22	4	84.6%



Learning Resources, Inc. v. Trump

607 U.S. ____ (2026)

IEEPA, Tariffs & the Separation of Powers



Constitutional Background

Article I, Section 8

Congress holds the taxing power. Tariffs are a tax.

Presidential Tariff Authority

No inherent power — must be delegated by Congress in a statute.

Two Tracks of Trump Tariffs

IEEPA tariffs — at issue here

Other statutes (Sec. 232, 301, etc.) — not at issue

What Is IEEPA?

International Emergency Economic Powers Act (1977)

The Statute

President may "regulate ... importation or exportation" when:

1. Emergency declared
2. "Unusual and extraordinary threat"

The Legal Issue



Does **"regulate"**
mean
tariff?

The Ruling

6-3 | Chief Justice Roberts | February 20, 2026

"Regulate" ≠ Tariff

1

Statutory Text

"Regulate" has never meant "tax"
in any statute

2

Major Questions Doctrine

Elephants in mouseholes —
clear delegation required

How the Justices Divided

MAJORITY — 6 Justices

Roberts + Gorsuch + Barrett

Text + Major Questions Doctrine

Kagan + Sotomayor + Jackson

Text alone is enough — MQD unnecessary

DISSENT — 3

Kavanaugh

(+ Thomas, Alito)

IEEPA authorizes tariffs

*MQD never applied to
national security /
foreign policy*

The Separation of Powers Arc

A Roberts Court project: pushing power back toward Congress

**West Virginia
v. EPA (2022)**

MQD

**Biden v.
Nebraska (2023)**

MQD

**Loper Bright
(2024)**

Chevron

**Learning
Resources (2026)**

MQD

Congress can't delegate its core powers through ambiguous language

All authored by Chief Justice Roberts

What Happens Now?



Refunds

~\$175–179B collected | CIT ordered refunds | logistics TBD



Section 122 Tariffs

10–15% global | 150-day limit | 24 states suing



Trade Deals

IEEPA-based deals legally fragile

Recently Decided

- *Trump v. V.O.S. Selections, Inc. / Learning Resources, Inc. v. Trump* (tariffs)
- *Trump v. CASA* (universal injunctions)
- *Seven County Infrastructure Coalition v. Eagle County* (NEPA Reviews - Scope)
- *City and County of San Francisco v. EPA* (CWA Permits)



Pending

- *Monsanto v. Durnell*
- *Andrews v. United States*
- *Trump v. Slaughter*
- *Suncor v. Boulder*
- *Sun Valley Orchards v. Dep't of Labor*



Notable Lower-Court Litigation

- Ag Stormwater
- State-Tort PFAS
- Climate Disclosure
- Future WOTUS, ESA Rules, BLM Land Conservation...



Questions?



AMERICAN FARM BUREAU FEDERATION®