COURTS SHOULD TEST PROMOTION OF GENERAL WELFARE UNDER THE U.S. CONSTITUTION – ON CUTTING MEDICAID PROGRAM TO PAY FOR TAX CUTS BENEFITING PREDOMINANTLY THE WEALTHY AND A NOTE ON TARIFFS; BACK TO THE BASICS, BACK TO THE FUTURE

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Abstract: Courts indolently and unconstitutionally ignore economics of legislation even if from the beginning it is known that the legislation creates poverty and damage to health contrary to the constitution overarching purpose of promoting general welfare. Courts base its inaction on precedents from times before big data modeling and advancements in behavioral economics made economics an empirically certain science. Given current enormous deficit economic duds cause risks to welfare of generations of Americans which the constitution aims to protect. A note on application to tariffs follows.

Keywords: General Welfare; Promotion; Deficit; Constitution; Poverty; Economic; Legislation; Tariffs

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I. PROMOTION OF GENERAL WELFARE

The constitution empowers congress to spend and tax for welfare that is general in nature only. Budgeting and cost benefit analysis requirements should be implied.

Article I, Section 8, Clause 1: "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."

In its preamble, promotion of general welfare is the essential purpose of the supreme law.

"We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America."

Although, the preamble is non-binding its language has been used interpretatively for understanding Constitution's broader objectives. In that way preamble expresses purpose but does not provide power.[1]

Nevertheless, spending or taxation that knowingly does not create overall general welfare should be unconstitutional.

This should be especially true if congress arbitrarily cut spending on the poor in order to arbitrarily cut taxes predominantly benefiting the rich; thus both of the cuts in spending and taxes knowingly do not create nor lead to overall general welfare. In other words, these cuts will not promote general welfare.

Logically, it seems courts must test whether there is overall welfare i.e. promotion of welfare which must be general in nature. Saying it differently "wider well-being" result and not only an attempt need to be present or forecasted for spending and taxes to be constitutional. This in and of itself would require objective testing of economic evidence and forecasts, and not mere deference to subjective and wishful political narrative.

II. RATIONAL BASIS TEST DEFERENCE

Under the rational basis test the spending and tax legislation law needs to be rationally related to a legitimate government interest, there must be a rational connection between the legislation and the legitimate purpose, and the purpose be reasonably achievable by the legislation, under this deference standard. The Rational Basis Test stems from the decision in U.S. vs Carolene Products Co., 304 U.S.144 (1938) where the court signaled judicial deference to economic regulations.

However, a tax law cut for the rich only made affordable by a spending cut on the poor that knowingly does not result or will not result in general welfare or even it's promotion is not constitutional and/or even rationally legitimate. We are dealing here

[1] Jacobson vs. Massachusetts 197 U.S. 11 (1905).

with two steps Article I and rational basis test neither of which is resulting in general welfare or its promotion.

The fact that this legislation is knowingly not resulting in overall general welfare obviously does not reasonably achieve that general welfare nor creates a rational connection with that welfare. To put it plainly a spending cut to pay for tax cut that causes poverty does not create any welfare as poverty is not welfare.

III. OBJECTIVE ECONOMIC REVIEW & BALLOONING DEFICIT

Constitution's general welfare result requirement trumps courts rational basis test.[2] However also, creation of or resulting poverty through spending or taxation does not pass either of the tests: general welfare test or rational basis test, provided there are working alternatives for spending or taxation and there is no necessity for cuts due to unaffordability. Again, rational interest test would only be passed as long as it would result in general welfare, not poverty.

Often overlooked the constitution's preamble also focuses on future generations' welfare. Hence, future general welfare and its forecasts should also matter. This is especially important when reviewing the deficit and making long-term decisions impacting it or connected to it.

Would that mean that any tax cut promotes poverty? No. Just as any spending would not result or promote general welfare today or in the future. Hence, objective economic data analysis and forecasts should used in judicial review. First, to answer whether general welfare will result and secondly if rational basis i.e. legitimate connection between the general welfare result and the legislation test is met.

An important question arises how to test a tax cut for the rich in times of ballooning deficit? For example, economists predict that our current deficit could cause as much as 10% reduction in wage income over next 30 years.[3] Does this mean that the courts should hear economists on this long-term angle too? The author is certain the courts should do exactly that.

Judicial review without deferring to the facts, actual mechanics or objective estimates and forecasts would be no more than symbolic rubber-stamping, of often populist political agenda, that these days can be simply amplified by media and social media.

Judicial branch ruled itself to be an equal branch of the government under the plain language of the Constitution. Namely, under Article III judiciary is established as an equal branch of the government and it would seem courts' deferment to the legislature on policy decisions by not objectively reviewing economics of the tested legislation, resembles more dereliction of court's duties. This is especially true that neither the legislature members nor judges are economists.

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[2] Supremacy Clause in Article VI Clause 2 U.S. Constitution.

[3] "Ballooning U.S. budget deficit is killing the American dream"., by Medora Lee www.usatoday.com 06.27.2024 https://www.usatoday.com/story/money/personalfinance/2024/06/27/us-budget-deficit-cuts-incomes/74211526007/

The power of judicial review was affirmed in Marbury vs Madison 5 U.S. (1 Cranch) 137 (1803). However, this was done in times where economics was a theoretical science and not an empirically certain science as it is becoming today, equipped with precision of mathematical modeling on big data and use of advancements in behavioral economics.

Consequently, the courts and legislature should rely on objective economic science and economic experts to promote general welfare. Furthermore, objective economic review would certainly be more consistent with courts currently practiced responsibility of considering animus or bias in legislation in determining its unconstitutionality.

IV. TAX CUTS PAID BY MEDICAID CUTS

Today, Trump administration is considering extension of 2017 tax cuts which majority of benefits went to the wealthy and ultra wealthy.[4] To cover the shortfall in revenue caused by these tax cuts, the administration is considering spending cuts which naturally will impact negatively most the middle class and the poor. The administration is also considering cuts to Medicaid, a healthcare program for the poor impacting rural areas the hardest.[5]

Furthermore, the tax cuts themselves proved not to result in general welfare but rather welfare of the wealthy.[6] The courts should take into account this unfairly biased economic situation towards the middle class and the poor. To do that, it should review economic and social arguments against income inequality and rule the cuts unconstitutional as they simply do not result in general welfare but are rather biased in favor of the already rich. Of course, the legislation should be ruled as constitutional if tax cuts also benefit the middle class and the poor and other balancing measures are passed that promote general welfare such as taxing the ultra rich.

A negative balance on welfare of these tax revenue cuts and spending cuts should be taken into courts decision of such legislation unconstitutionality. Lesser spending cuts which ideally would less negatively impact the middle class and/or the poor, tying or preceding this legislation to additional spending that promotes general welfare such as spending on education or healthcare and offsetting reforms that promote same such as immigration reform would have a positive effect in determining constitutionality of this legislative package.

The courts should also hear expert economist testimony on deficit these tax cuts would generate and how it will particularly impact the middle-class and the poor by forecasting interest rates on credit cards and mortgages to accurately rule on constitutionality of this tax cut legislation which again must result in general welfare –

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[4] "The 2017 Trump Tax Law Was Skewed to the Rich, Expensive, and Failed to Deliver on Its Promises"., By Chuck Marr, Samanta Jacoby and George Fenton, 06.13.2024, www.cbpp.org https://www.cbpp.org/research/federal-tax/the-2017-trump-tax-law-was-skewed-to-the-rich-expensive-and-failed-to-deliver

[5] "The most likely Medicaid cuts hit rural areas the hardest." By Scott S. Greenberger. www.medicalexpress.com 03.17.2025 https://medicalxpress.com/news/2025-03-medicaid-rural-areas-hardest.html

[6] "The economic consequences of major tax cuts for the rich"., Socio-Economic Review. 20(2): 539-559. Doi:10.1093/ser/mwab061. ISSN 1475-1461.

please see again preamble to the U.S. Constitution and Article I section 8 of the U.S. Constitution.

It should be noted that so far courts acted quite flexibly in ruling on economic policies constitutionality and were more strict when detecting animus or bias.

However, a policy that from its onset is not known to result general welfare such as tariffs, effectively a tax on the poor, coupled or close in time to spending cuts on things related directly to general welfare, obviously tax cuts for the rich should risk court's review and action.[7]

Therefore, the courts should hear economist panel testimony on broader economic implications of reviewed legislation. This would be a logical expansion of court economic review functions from currently mainly anti-trust cases.

V. AVAILABLE ALTERNATIVE

Spending cuts that limit benefits for the poor such as Medicaid cuts, even if are necessary to balance the budget would still be susceptible if that budget shortfall is caused by tax cuts predominantly benefiting the rich. In this timely example court should rule that the legislature has an option to raise the tax revenue from the rich to pay for the poor and not gut Medicaid. Thus, doing this in an equitable manner by overall creation of general welfare. Had the court allow for Medicaid cuts to balance the tax cuts for the rich it would make the poor poorer and the rich richer thus, not creating or even promoting general welfare.

Note that if the rich would pay their fair i.e. proportionate share of taxes to pay for the Medicaid program for the poor, the rich would have similar tax rate to the poor. This is not the current case as the rich effective tax rate is low in comparison to the general population.[8]

Taxing the rich would create more equity and would be just, as it makes poor less poor while the rich remain still rich. Of course, the courts would also need to take into account optimal tax rate as agreed by economists that would not restrain growth.[9] This court testing activity would clearly be in line with promotion of general welfare which both the legislature and courts are tasked with under the Constitution.

There are, however, several cases baffling the author where Supreme court ignores income inequality despite the Constitutional article requiring general welfare result.

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[7] "The Trouble with Tariffs, By David Kelly, Notes on the Weak Ahead"., www.am.jpmorgan.com 03.03.2025 https://am.jpmorgan.com/us/en/asset-management/adv/insights/market-insights/market-updates/notes-on-the-week-ahead/the-trouble-with-tariffs/

[8] "The Forbes 400 Pay Lower Tax Rates Than Many Ordinary Americans", By Seth Hanlon and Nick Buffie, www.americanprogress.org 10.07.2021 https://www.americanprogress.org/article/forbes-400-pay-lower-tax-rates-many-ordinary-americans/

[9] "Krugman on optimal taxes", The Grumpy Economist, https://johncochrane.blogspot.com 01.06.2019 https://johnhcochrane.blogspot.com/2019/01/krugman-on-optimal-taxes.html In that blog economists Diamond and Saez are cited in estimating the optimal top marginal tax rate at 70% a long way to go from current rate of 37%.

On the other hand, there are a couple of notable cases where the courts got on the side of economic fairness against economic disparities. Particularly, in NFIB vs Sebelius court ruled that the government is permitted to use taxation as a policy tool and in that case tax citizens to expand healthcare coverage and thus reduce inequality.[10]

Currently, the government is planning on doing almost exactly the opposite; namely, mechanically reducing taxes for the rich and balancing this revenue shortfall with cuts to the Medicaid's benefits for the poor. Thus, increasing inequality and consequently reducing the general welfare.

NFIB vs Sebelius implies that the supreme court should be interested and can rule on this fact pattern, as well. Merely ignoring it because it renders an opposite result to NFIB vs Sebelius would be illogical and inconsistent to the overarching principle of promotion of general welfare. Furthermore, Medicaid cuts may also lead to similar in size revenue losses at the hospitals for uncompensated care, often shifting and enlarging overall costs to taxpayers through worst health outcomes, higher healthcare prices and healthcare job losses.[11] Medicaid's work requirement did not increase employment either[12]

VI. DEFERENCE OR DERELICTION

To rule on whether policy / legislation results and/or promotes general welfare logically, court has to test the economics of such policy / legislation. Relying on the congress opinion truly does not answer the question at all. Had the court not review the economics of the legislation it would not test at all whether the legislation is constitutional because it would simply not test whether the legislation economics will result or even promote general welfare.

Such answer can only be given by economic subject matter experts and specifically reliance and deference to political narrative is likely not answering the question with proper level of objective necessary expertise.

If the legislation economics are questioned, they can be litigated through sworn economic, subject matter expert testimony just like any other legal issue. The notion the judges are not equipped with economic expertise is thus flawed and deference to the congress on economic policy for the same reason must also be flawed when congress does not rely on subject matter expertise that is forecasted to result in general welfare.

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[10] 597 U.S. 519 (2012)

[11] "Medicaid cuts would cost hospitals billions, spike uncompensated care costs: Report", By Alan Condon. www.beckershospitalreview.com 03.11.2025. https://www.beckershospitalreview.com/finance/medicaid-cuts-would-cost-hospitals-80b-in-2026-spike-uncompensated-care-costs-report/ See also "Commentary: Preserve Medicaid funding to safeguard healthcare for our neighbors." By Damond Boatwrite. www.myjournalcourier.com (Last visited 3.17.2025), https://www.msn.com/en-us/health/other/commentary-preserve-medicaid-funding-to-safeguard-health-care-for-our-neighbors-damond-boatwright/ar-AA1AJKX7

[12] "Congressional Republicans Can't Cut Medicaid by Hundreds of Billions Without Hurting People." By Allison Orris and Elisabeth Zhang. www.cbpp.org 03.17.2025 https://www.cbpp.org/research/health/congressional-republicans-cant-cut-medicaid-by-hundreds-of-billions-without-hurting

Moreover, deference on economics of legislation and economic policy to the legislature is not based on any provision in the constitution. This effective division of work was rather invented by the Supreme Court, generations ago when economics where not a highly empirical and certain science, as it is today.

VII. KNOWN TO BE WRONG

The issue whether rational basis test allowing only rational laws, allows laws that do not result or promote general welfare can get more complicated. In our particular example, already comparatively low corporate tax rate is planned to further be lowered and extended, and the consequent shortfall in tax revenue is to be covered by cuts to spending on healthcare for the poor clearly not resulting or promoting general welfare.

A natural question develops again whether an even more competitive tax rate is a legitimate interest when it falls behind the optimal tax rate beyond which it benefits diminish and/or done during ballooning deficit. If the current precedent rules that any legitimate rational interest whether better or not would be constitutional, it does not answer if a known to be completely wrong economically legislation is legitimate as it certainly would not produce general welfare. Given that we already discussed and agreed of court obligation of reviewing economics of legislation what policy sense would it make to approve a known economic dud post review. Thus, lowering tax rate below optimal level would not create overall welfare whether in times of deficit or not.

The administration to be treated seriously on further tax cuts for onshore manufacturing would also have to close tax loopholes incentivizing offshore manufacturing at the least.[13] Bringing manufacturing jobs will not be easy, given high labor costs in U.S., inexistent supply-chain, costly regulations - things that the administration is also not discussing nor has no plan for.[14] It also seems tariffs would increase costs for U.S manufacturing.[15] Last not least higher paid job openings are available right now in the U.S. in services.[16]

We know that from economists who teach us that trickledown economics do not work in converting corporate tax savings into greater employment or salaries.[17] From the beginning it is also well known that the tax rates are already competitive[18] and

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[13] "The U.S. Tax System's Curious Embrace of Manufacturing Job Losses", By J. Clifton Fleming, Robert J. Peroni, Stephen E. Shay. www.taxnotes.com, https://www.taxnotes.com/special-reports/base-erosion-and-profit-shifting-beps/u.s-tax-systems-curious-embrace-manufacturing-job-losses/2024/09/30/7lscm 10.01.2024

[14] "Bringing Manufacturing Back To The U.S. Easier Said Than Done." By Guankai Zhai www.forbes.com, 08.28.2024. https://www.forbes.com/councils/forbesbusinesscouncil/2024/08/28/bringing-manufacturing-back-to-the-us-easier-said-than-done/

[15] *Id*.

[16] CNN.com, GPS, By Fareed Zakaria. aired on 03.23.2025. https://www.msn.com/en-us/news/politics/fareed-s-take-manufacturing-is-the-way-of-the-past/vi-AA1BuUHg?ocid=BingNewsSerp

[17] "Trickle-Down Tax Cuts Don't Create Jobs", By Seth Hanlon and Alexandra Thorton. www.americanprogress.org 08.24.2017 https://www.americanprogress.org/article/trickle-tax-cuts-dont-create-jobs/

[18] "International Tax Competitiveness Index 2024" By Alex Mengden, www.taxfoundation.org 10.21.2024 https://taxfoundation.org/research/all/global/2024-international-tax-competitiveness-index/ . Note also the fact that U.S. had a composite marginal effective tax rate of about 11.2% making it

further extension of tax cuts covered by cuts to Medicaid will not result or promote general welfare. On the other hand, we also know from economists that higher taxes would not affect negatively economic growth and would make the cuts to Medicaid unnecessary, thus preserving general welfare. Since court would know this from the testimony of experts what policy sense would it make to allow general welfare destruction?

Therefore, even if these tax cuts would be viewed as rational, the fact that the consequent revenue shortfall is covered by spending cuts on the poor and would overall negatively impact general welfare the legislation should be viewed as unconstitutional.

To conclude, it must be emphasized, that promotion of welfare is the preeminent goal of spending and taxing powers and is clearly defined in the constitution. The rational basis test is only stemming from courts interpretation and thus cannot directly contradict defined in constitutional article overall general welfare requirement. Furthermore, how can legislation be rational in example where it from the onset destroys general welfare and other alternatives are available which promote general welfare such as tax raise.

VIII. COURT INACTION

Courts lack of interest in reviewing economic outcomes of legislation may also stem from some justices partisanship caused by how they are appointed. Justices reach old age, due to their lifetime tenures, lack of performance incentives, tight court docket and fewer justices number may also amplify the restraint to review economics of legislation.

However, by no means should this be an excuse especially in situations where legislation is apparently flawed and promotes poverty against one of the main purposes of the constitution.

Previously, nonexistent code of conduct, but currently still non-binding code should have been tied to incentives for objective performance such as hours spent and complexity of cases including complex economic cases.

Failure to critically assess known poverty creating duds resembles dereliction of duty permitting economic inefficiencies often on weakest and poorest members of our society contradicting the very principles constitution seeks to uphold.[19] Courts should be uniquely sensitive to economic populism spread on social media.

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more competitive than the statutory rate of 21% is suggesting. ”U.S. Effective Corporate Tax Rate Is Right in Line With Its OECD Peers”,
By Daniel Bunn, Garrett Watson. 04.02.2021 https://taxfoundation.org/blog/us-effective-corporate-tax-rate-oecd-peers/

[19]“Takings: Private Property and the Power of Eminent Domain”, Richard A. Epstein (1985) (Last visited 03.25,2025) https://doi.org/10.2307/j.ctvjghwth

Another panel of supreme court justices would make the court twice as effective.[20] However, the weakened legitimacy of the court coupled with the battue on civil servants makes its expansion unlikely.

Public outrage should a government made recession be triggered could however, easily push the court itself to require empirical economic analysis as part of rational basis review[21] or even to push the legislature to reform the supreme court. The reform may however, depend on the level of the economic harm public would face which could also be triggered by squandered technological advantage against U.S. biggest competitor China.

The necessary bipartisan cooperation seems unlikely at this moment and will most likely happen after the fact, on heels of an economic crisis or embarrassing science cuts driven competition loss.

Media behavior control capabilities give hope but at the same time surprise with weak patriotism, timid by partisanship and further eroded by highly paid positions tied to ratings of simplified 24/7 content for a society which half is without tertiary education.[22]

IX. WHAT TO DO?

There needs to be a will by the media to report more on economics of legislation its short-term and forecasted long-term effects and court inaction. Economics of legislation should be more of an objective evidence-based topic instead of wishful partisan experiment.

A well-crafted, long and determined media campaign perhaps would generate enough self-reflection at the courts' levels to properly apply the law and review whether there is overall resulting general welfare or even its promotion in legislative agenda while using even the rational basis test.

If not, media should prepare the public for likely recession, loss of competitiveness, but also U.S. debt downgrade, higher interest rates, social security cut and housing unaffordability. But objective and knowledge building economic criticism of populistic policies would allow for fairer democratic process and legislators accountability.

Otherwise, current short-term partisan oversimplifications foretell a bleak economic future if not the end of the republic as we know it, one ignored court order at a time.

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[20] "Modern Constitutional Reform- Rebalancing the 3 Branches of Government for Greater Governance Efficiency on U.S.A Example". By Rafal Pruchniak. The International Journal of Law, Ethics and Technology. https://www.ijlet.org/wp-content/uploads/2025/03/IJLET-5.1.pdf (Last visited 03.25.2025)

[21] "Economic Analysis of Law", Richard A. Posner (9th ed.2014)

[22] "Share of adults who have earned a tertiary education in OECD countries in 2022", www.statista.com (last visited on 03/16/2025) https://www.statista.com/statistics/1227287/share-of-people-with-tertiary-education-in-oecd-countries-by-country/

The positive resolution of the need for courts economic review could perhaps see a self-imposed minimum number of complex cases, including economic cases on the dockets of justices as a start of a more prosperous tomorrow.

X. STRICT SCRUTINY

Medicaid cuts can disproportionately affect protected classes, including racial minorities and individuals with disabilities.[23] Courts may apply strict scrutiny if Medicaid cuts disproportionately or intentionally harm protected classes violating the equal. protection clause.[24] It has to be emphasized that poverty is not a suspect classification.[25]

Under strict scrutiny government must show legislation serves compelling interest, is narrowly tailored and uses least restrictive means.

However, all this does not mean the government can further impoverish Medicaid recipients through these cuts. This would be against the welfare clause as discussed earlier.

Would enormous deficit trump the strict scrutiny? - not under the least restrictive means prong as the fiscal goal of reducing debt could be achieved by raising taxes especially in a more economically optimal way thus also satisfying the general welfare clause.

Only cuts narrowly tailored could proceed if they would impact wasteful spending.

The fact that deficit reduction is a compelling government interest would not impact the two other strict scrutiny prongs discussed above.

As you can see economic analysis is needed to be reviewed by the legislature, the courts and the public to better fine tune our democratic process which was designed in the first place as a gentlemen agreement where all parties work on achieving prosperity in respect for one another needs and individual situations applying the cost benefit analysis and budgeting.

A. Media Campaign and Overturning Precedent

Overturning court precedents can happen when societal and legal interpretations evolve. The courts slowly but surely evolved to protect vulnerable economically members of our society over the decades. A question before us now is whether courts would be ready to catch up by a technologically driven leap of considering economics as a certain science based on empirical big-data.

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[23] "Medicaid Cuts Would Rip Away Health Coverage from Millions of Americans, disproportionately Harming People of Color." unidous.org 03.13.2025 https://unidosus.org/publications/medicaid-cuts-would-rip-away-health-coverage-from-millions-of-americans-disproportionately-harming-people-of-color/, See also "Medicaid at Risk: What Cuts Mean for People with Disabilities – and All of Us.", By Jackie Dilworth. thearc.org 01.03.2025 https://thearc.org/blog/media-memo-medicaid-at-risk/.

[24] See Dekker v. Weida 679 F.Supp. 3d 1271 N.D. Fla. 2023.

[25] San Antonio Independent School District v. Rodriguez 411 U.S. 1 (1973)

This of course will naturally be challenged by politics, justices preferences and customs but it shouldn't. Again, cost-benefit analysis is emphasized in the preamble of constitution and mandated by the spending clause.

Therefore, critical to this process will be a media campaign raising economic awareness and interest. Proving economic science reliability often against social media trends and intentional social media amplifications.

The justices would ultimately analyze whether review of objective economics would further politicize the court and if the lack of accountability due to justices life tenures vs terms of legislators would be optimal.

However, in authors opinion there would be less friction between political bias and empirically driven on big data economic science. This opinion needs to be seconded by all of us, however, biases already exist and what is lacking and would be truly transformative, is a scientific quality of economical legislation of the future.

B. Concerns Over Presidential Use of Tariffs as a Tax

Administration's use of tariffs as a broad revenue-raising mechanism exceeds presidential authority under current trade statutes and constitutional law. However, such use is functionally equivalent to taxation and thus subject to constitutional constraints, including the General Welfare Clause and the nondelegation doctrine. The author argues that testing such tariffs also under the General Welfare Clause would provide a more rational, constitutional, and policy-sound framework for evaluating tariff actions.

Under Article I, Section 8, Clause 1 of the U.S. Constitution, Congress has the exclusive power to "lay and collect Taxes, Duties, Imposts and Excises," and to "regulate Commerce with foreign Nations." Tariffs traditionally fall under this power when used to regulate international trade. Tariffs are a form of impost or duty imposed on imports, historically used for both revenue and regulatory purposes. Under Section 7 of the same article, "All Bills for Raising Revenue shall originate in the House of Representatives…". This reflects the framers' intent to keep the taxing power in Congress, not the President.

In U.S. v. Hvoslef, 237 U.S. 1 (1915), the Supreme Court recognized that tariffs may have both revenue and regulatory purposes. However, when tariffs function primarily to raise general revenue, they must conform to constitutional taxation rules, including those under the General Welfare Clause see United States v. Butler, 297 U.S. 1 (1936).

C. Tariffs Power Delegation

It has to be emphasized here that Congress has delegated only a limited tariff authority to the President through several statutes: Trade Expansion Act of 1962, 19 U.S.C. § 1862 (Section 232) – permits the President to impose tariffs if the Secretary of Commerce finds that imports threaten national security, Trade Act of 1974, 19 U.S.C. § 2411 (Section 301) – allows retaliatory tariffs in response to foreign unfair trade practices, and Tariff Act of 1930, 19 U.S.C. § 1336 (Section 336) – authorizes tariff adjustments to equalize costs of production.

These statutes have been upheld under the nondelegation doctrine because they include an intelligible principle to guide executive action. See J.W. Hampton Jr. & Co. v. United States, 276 U.S. 394 (1928). However, when executive action lacks a genuine connection to the statutory goals such as national security or trade retaliation the delegation may no longer be valid.[26] Broad, indiscriminate tariffs not tied to these principles risk violating the nondelegation doctrine.

D. Tax or Tariff

Courts assess whether a government measure is a tax based not on form but on function. In National Federation of Independent Business v. Sebelius, 567 U.S. 519 (2012), the Court emphasized that what matters is how the measure operates in practice, not how it is labeled.

If a tariff applies to all imports, without case-specific findings, is justified primarily by fiscal needs rather than trade goals, is projected as revenue in the federal budget and lacks a clear statutory link to national security or trade remedies then it functions as a tax and must be treated as such under the Constitution. The fact that the current administration tariff formula penalizes trade deficit has more to do with customer preferences or trading partners countries development stage and their wealth rather than national security concerns.

The General Welfare Clause, Article I, Section 8, Clause 1, limits federal taxation to purposes that promote general welfare. While the Court has afforded Congress broad discretion here (United States v. Butler, 297 U.S. 1 (1936)), executive actions do not enjoy the same deference particularly when Congress did not even expressly authorize the tax to be discussed in more detail below.

Since the administration uses tariffs to also generate revenue rather than only regulate trade, and in a way that imposes burdens on U.S. consumers and businesses, then the tariffs may not always meet the general welfare requirement which would consequently need to be evaluated. Moreover, Congress (and Courts) would have to be the body to determine (and review) based on facts whether such a tax promotes the general welfare not the President acting unilaterally.

Recent practice suggests that tariffs are being used as a de facto revenue tool. Office of Management and Budget projections include hundreds of billions of tariff revenues as part of the federal budget.[27] Public statements by officials, including the Presidents, frame tariffs as a means to fund U.S. programs and reduce deficits. Moreover, tariffs have been imposed indiscriminately across countries and goods, without clear security justification under discussed Section 232 or Section 301.

This pattern undermines any claim that the tariffs are narrowly tailored trade measures. Instead, the facts and circumstances strongly suggest that the executive is exercising general taxing power without even a delegation from Congress.

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[26] https://www.law.cornell.edu/wex/nondelegation_doctrine (Last visited 04.09.2025).

[27] See also "State of U.S. Tariffs: Week of April 7, 2025." The Budget Lab. https://budgetlab.yale.edu/research/state-us-tariffs-week-april-7-2025 (Last visited 04.12.2025.)

If the President's tariff actions are primarily for revenue generation, this raises constitutional concerns: 1. Nondelegation Violation – Tariff imposition beyond intelligible statutory limits could invalidate the delegation itself. 2. Encroachment on Congressional Taxing Power – Only Congress can impose taxes; the President's actions may usurp that power. 3. Failure to Promote General Welfare – Taxes must serve a public interest, and these tariffs may fail that test. A challenge could invite the Supreme Court to revisit nondelegation, clarify when a tariff becomes a tax and whether it satisfies general welfare clause.

It is likely that if the Congress could explicitly authorize the President such use of tariffs in taxation i.e. revenue-raising activity, the President's delegation would be constitutional provided that the Congress lays down an intelligible principle under J.W. Hampton, Jr & Co. v. US. 276 U.S. 394 (1928). However, under the discussed Article 1 Section 8 and 7 revenue-raising is also treated as a core and exclusive function of the Congress thus the Congress cannot abdicate this power completely disallowing unbounded or standardless delegation under Skinner v. Mid-America Pipeline Co., 490 U.S. 212 (1989). Nevertheless, under United States v. Butler, 297 U.S. 1 (1936) the court ruled that the taxing power is limited to serving general welfare and as such revenue raising tariffs would be tested.

So whether such delegation be constitutional or not it would still very likely have to satisfy the general welfare clause. However, most recently, Jaime Diamond the CEO of JP Morgan Bank warned (together with many other economists) that tariffs will slow growth and increase prices on consumers thus clearly failing the general welfare clause.[28]

It is uncertain whether the Court would review presidential executive order imposing tariffs on all countries on a country-by-county basis and invalidate some and approve others that meet national security or trade retaliation statutory delegations.

It is more logical that courts would review tariffs on a country-by-country basis, would that, however, mean that such particular tariffs would need to satisfy the welfare clause? Author is of opinion that dual-purpose tariffs that are regulatory and revenue raising in nature, effect cannot run in contradiction of also the Welfare Clause in addition to other constitutional provisions like the Commerce Clause or Equal Protection.

They also must serve legitimate public interest, which as discussed earlier in this article is not general poverty creation, and of course not be arbitrary and purely punitive. This stems from the ruling in United States v.s. Butler where the court emphasized that Congresses power to impose tariffs is not unlimited and the ends must be constitutional and means appropriate.

When a tariff enacted by Congress serves not only a regulatory function under the Commerce Clause but also raises revenue, it implicates Congress's taxing power under Article I, Section 8, Clause 1. Because the taxing power is an independent constitutional grant, separate from and not limited by the scope of other enumerated

[28] "Jamie Dimon Warns Tariffs Will Raise Prices, Slow Growth - JPMorgan CEO says in annual letter he hopes for long-term benefits, but that many uncertainties exist." By Candice Choi, Updated April 7, 2025 https://www.wsj.com/economy/jamie-dimon-warns-tariffs-will-raise-prices-slow-growth-8b82baaf?st=3qjHCT

powers, any measure partially enacted under it—including dual-purpose tariffs—must satisfy the General Welfare Clause.[29]

Again, Congress may impose tariffs under the taxing power of Article I, Section 8, Clause 1 which gives Congress the power "to lay and collect Taxes, Duties, Imposts and Excises," so long as such measures promote the general welfare and are uniform. Although, the Commerce Clause of Article I, Section 8, Clause 3 allows Congress to regulate trade with foreign nations - tariffs are "duties" and "imposts," explicitly included within the scope of the taxing power. When tariffs raise revenue, even if they also regulate trade, they should trigger obligations under the General Welfare Clause.

The Supreme Court has made very clear that the taxing power stands on its own constitutional footing and is not dependent upon or limited by Congress's other enumerated powers. In United States v. Butler, 297 U.S. 1 (1936) the Court declared:

> "The power of taxation which is granted by the General Welfare Clause is not restricted by the limitations imposed on the use of other powers specifically granted."

In other words, Congress can tax for purposes of the general welfare even where it could not regulate directly under the Commerce Clause or another power. Note, the Butler Court invalidated a spending program because it used the taxing power to coerce state agricultural practices—thus violating federalism, even though the tax was for a claimed public benefit.

In NFIB v. Sebelius, 567 U.S. 519 (2012) the Court reaffirmed that a law valid under the taxing power need not be valid under the Commerce Clause. It upheld the individual mandate as a lawful tax, despite it failing under Commerce Clause scrutiny, emphasizing that the taxing power is subject only to its own internal limits, such as the General Welfare Clause. This is because the taxing power is not constrained by other powers, it is subject only to its own limits—most centrally, the requirement that it serve the general welfare.

When Congress imposes a tariff that: raises revenue, and serves a regulatory purpose (e.g., protecting industry, shaping trade behavior), it is exercising both its Commerce Clause and Taxing Clause powers. Because the taxing power is independent, the measure must independently satisfy the requirements of that power:

Under the general welfare clause the revenue raised must at least promote general welfare, if not overall create such general welfare and be used in service of the nation's general welfare, not for coercive or punitive ends.

Furthermore, Under the Uniformity Clause: Tariffs must be applied uniformly across the United States. However, more importantly under the Anti-Coercion Principle: If the tariff is so onerous as to function as a penalty rather than a tax, it may be struck down as a disguised regulation.[30] This prevents Congress or the President

[29] OpenAI ChatGPT. https://chat.openai.com. Response to author's guiding prompts. 04.19.2025.
[30] In Bailey v. Drexel Furniture Co., 259 U.S. 20 (1922), the Court struck down a tax imposed to regulate child labor, holding it was a penalty masquerading as a tax.

from using tariffs as a regulatory end-run, imposing economic burdens for policy purposes without meeting the constitutional standards of taxation.

To sum up the taxing power is not merely a support to other enumerated powers—it is a distinct and independent constitutional authority. As such, any federal measure—including tariffs—that partially relies on the taxing power must comply with the General Welfare Clause. This means that dual-purpose tariffs, which both regulate trade and raise revenue, cannot escape constitutional scrutiny. They must be structured and justified in a way that demonstrably at least promotes if not creates the general welfare of the United States, or they risk being declared unconstitutional under longstanding Supreme Court doctrine.

Regarding policy justification, this framework would (1) restrain any government branch overreach or populism, (2) ensure economically rational, welfare-enhancing tariff policy. and (3) It would also create judicially reviewable standards to curb erratic or politically motivated tariff actions.

The fact that the current back and forth inconsistent announcements of tariffs by President Trump led to a market crash, downward spiral in consumer spending sentiment, and over 50% - 70% likelihood of a recession provides a clear answer that the overall effects of these tariffs contradict the General Welfare Clause, serve an illegitimate public interest of general poverty creation, and many of them are simply punitive and they are unlikely to lead to increased manufacturing in the U.S.[31] It is important to note here that the President also attacked industrial policy championed by his predecessor's administration, a policy that has proven to increase domestic manufacturing, thus showing there is no consistent policy and genuine interest in manufacturing creation beyond predominantly revenue generation.[32]

Additionally, the steep percentage of the tariff levied tips the scale on their strong revenue-raising effect. In case of tariffs on China the very steep barrier could be simply cost prohibitive in using those inputs in U.S. manufacturing. [33] It would also invite due process concerns; The Fifth Amendment prohibits arbitrary government actions that lack a rational basis. and the embargo like 145% tariff imposed without economic justification could be challenged as an irrational and punitive act that "shocks the conscience."[34]

In conclusion, it appears that courts would likely rule that President tariffs violate the General Welfare Clause if challenged in court given the gravity of Presidents misguided policy or rather lack thereof and its financial ruinous effects. The General Welfare Clause should serve as an objective guiding principle for any branch of the

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[31] Bailey v. Drexel Furniture Co., 259 U.S. 20 (1922).

[32] Over 33,000 jobs created by the Chips Act - see "Chips and Science Act: Breaking down the law's impact 2 years later." www.manufacturingdive.com by Joelle Anselmo. Published on 07.26.2024. https://www.manufacturingdive.com/news/semiconductor-chips-and-science-act-investments-impact/720235/

[33] 49% of the total imports from China that were subject to Section 301 tariffs were intermediate goods used in U.S. manufacturing in 2021. Reducing these tariffs would make US products more competitive and spur growth. See "Section 301 China Tariffs by End Use", By Tom Lee and Tori Smith. Published on 01.11.2023 https://www.americanactionforum.org/research/section-301-china-tariffs-by-end-use/

[34] BMW of North America v. Gore*, 517 U.S. 559 (1996) illustrates how disproportionate economic penalties can violate substantive due process.

government and any leader whether on the left, center or right. The General Welfare Clause was analyzed here from perspective of spending and tax cuts, and tariffs, however, its role could be much broader and only our imagination could be its limit. Author wishes here of course the Supreme Court sees transformative potential this objective clause could have on quality of work coming from our representatives of course regardless of their party affiliation. This approach is both doctrinally sound and policy-wise prudent. It aligns constitutional interpretation with the realities of modern economic governance and reinforces the necessary checks and balances that preserve the rule of law. Author wishes also foreign scholars reading this article can draw comparative ideas on discussed U.S. policy mistakes (of the century) and rethink whether their laws have backstops against their homegrown economic populism.[35]

[35] The author acknowledges the use of OpenAI's ChatGPT for assistance in generating preliminary ideas and clarifying conceptual distinctions during the writing process, All interpretations and conclusions are author's own.