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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

JOSEPH KIRCHNER,
Plaintiff,

Case No. _____

vs.

**APPENDIX A: MADISONIAN
SEPARATION OF POWERS
COMPLIANCE TESTING**

ALEXANDER ACOSTA, et al.,
Defendants.

I. Introduction

1. This Appendix applies the Madisonian Separation of Powers Objective Compliance Test established in the Memorandum of Law: The Madisonian Separation of Powers Objective Compliance Test to seven categories of coordinate government action. Each test proceeds through the six-step methodology derived from Madison's constitutional framework.

2. The six steps are:

Step	Name	Core Question
1	Clause Identification	Which constitutional clause assigns the power?
2	Coordinate Action Classification	Is it legislative enactment, judicial doctrine, or executive enforcement?
3	Syllogism Construction	Can we establish Major (clause) → Minor (in pursuance) → Conclusion (valid derivation)?
4	Textual Consistency	Does the same interpretive method yield valid results for ALL parallel clauses?
5	Structural Impossibility	Is the power inherently non-delegable?
6	Position Indivisibility	Does the claimed actor satisfy ALL definitional clauses for the assigned position?

3. A coordinate action **FAILS** the test if it fails ANY step. Constitutional validity requires passing ALL six steps.

II. TARIFF DELEGATION (TRADE ACT OF 1974 / SECTION 122)

A. Step One: Clause Identification

4. The power to lay duties (tariffs) is assigned by 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; but all Duties, Imposts and Excises shall be uniform throughout the United States."

U.S. Const. art. I, § 8, cl. 1.

5. This clause establishes the **Major Premise**: The Congress shall have power to lay Duties.

B. Step Two: Coordinate Action Classification

6. The Trade Act of 1974, 19 U.S.C. § 2101 et seq., and specifically Section 122 (19 U.S.C. § 2132), is a **legislative enactment** that purports to delegate tariff-imposing authority to the President.

7. Section 122 authorizes the President to impose surcharges up to 15% for up to 150 days under specified conditions related to balance-of-payments deficits.

8. As a legislative enactment, Section 122 must be "made in Pursuance" of the Constitution to qualify as supreme law under Article VI, Clause 2.

C. Step Three: Syllogism Construction

9. The claimed syllogism for tariff delegation:

Step	Premise
MAJOR	"The Congress shall have Power To lay... Duties" (Art. I, § 8, cl. 1)
MINOR	Section 122 is law "in Pursuance thereof" delegating this power to the President
CONCLUSION	Therefore, the President may impose tariffs as delegate of congressional power

10. This syllogism must survive the textual consistency test to establish the Minor Premise.

D. Step Four: Textual Consistency Analysis

11. Article I, Section 8 contains the following clauses assigning powers to "The Congress":

Clause	Power Assigned to "The Congress"
Cl. 1	Lay and collect Taxes, Duties, Imposts and Excises
Cl. 2	Borrow Money on the credit of the United States
Cl. 3	Regulate Commerce with foreign Nations
Cl. 4	Establish uniform Rule of Naturalization and Bankruptcy Laws
Cl. 5	Coin Money, regulate the Value thereof
Cl. 6	Provide for Punishment of counterfeiting
Cl. 7	Establish Post Offices and post Roads
Cl. 8	Promote Progress of Science by securing Patents and Copyrights
Cl. 9	Constitute Tribunals inferior to the supreme Court
Cl. 10	Define and punish Piracies and Felonies on the high Seas
Cl. 11	Declare War , grant Letters of Marque and Reprisal
Cl. 12	Raise and support Armies
Cl. 13	Provide and maintain a Navy
Cl. 14	Make Rules for Government of land and naval Forces
Cl. 15	Provide for calling forth the Militia
Cl. 16	Provide for organizing, arming, and disciplining the Militia
Cl. 17	Exercise exclusive Legislation over the District of Columbia
Cl. 18	Make all Laws necessary and proper for carrying into Execution the foregoing Powers

12. Apply the textual consistency test. If legislative enactment can delegate the Duties power to the President, the **same legislative mechanism** must be capable of delegating parallel powers:

Parallel Clause	Can Statute Delegate This Power to President?	Analysis
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Borrow Money on credit of United States	No	Congress cannot delegate unlimited borrowing authority
Regulate Commerce with foreign Nations	Disputed — but wholesale delegation unconstitutional	Delegation of entire commerce power would collapse Art. I
Coin Money, regulate Value thereof	No	Monetary policy fundamentally legislative
Establish Post Offices	No	Congress cannot delegate power to abolish postal system
Constitute inferior Tribunals	No	Article III structural requirement
Declare War	No	War Powers Resolution attempts limit, but wholesale delegation unconstitutional
Raise and support Armies	No	Appropriations limit applies
Lay Duties	By textual consistency: NO	

1 **13.** The interpretive method fails for critical parallel clauses. A statute cannot
2 delegate the power to "Declare War" wholesale to the President — this is universally
3 recognized. A statute cannot delegate the power to "Coin Money" to the President. A
4 statute cannot delegate the power to "Constitute Tribunals inferior to the supreme
5 Court" to the President.

6 **14.** By Madison's principle, "the same argument results from the same
7 consideration." If statutes cannot delegate these parallel Article I, Section 8 powers,
8 statutes cannot delegate the Duties power.

9 **15. The absurdity test:** If Section 122's delegation is constitutional, then
10 Congress could enact:

- 11 • "Section 123: The President may Declare War whenever he determines national
- 12 security requires"
- 13 • "Section 124: The President may Coin Money in such denominations as he deems
- 14 appropriate"
- 15 • "Section 125: The President may Constitute Tribunals as he judges necessary"

1 **16.** These hypothetical statutes are manifestly unconstitutional. Section 122
2 differs only in subject matter, not in constitutional structure. The interpretive method
3 that validates Section 122 would validate Sections 123-125. Therefore, the interpretive
4 method is invalid.

5 **17. Conclusion:** The textual consistency test **FAILS**. Tariff delegation is
6 constitutionally indistinguishable from war-declaration delegation or money-coining
7 delegation.

8 **E. Step Five: Structural Impossibility Determination**

9 **18.** The tariff power is structurally non-delegable:

10 a. **Express assignment to "The Congress":** Article I, Section 8 assigns powers to
11 "The Congress" — a constitutionally-defined body with specific structural
12 requirements (bicameralism, House origination of revenue bills, presentment);

13 b. **Revenue bill origination requirement:** Article I, Section 7, Clause 1 requires "All
14 Bills for raising Revenue shall originate in the House of Representatives." Tariffs raise
15 revenue. Executive-imposed tariffs bypass this structural requirement entirely;

16 c. **Incompatibility Clause confirmation:** If the same person cannot hold legislative
17 and executive office simultaneously (Art. I, § 6, cl. 2), a fortiori the same branch
18 cannot exercise both legislative tariff power and executive enforcement;

19 d. **Appropriations structure:** Article I, Section 9, Clause 7 requires "No Money shall
20 be drawn from the Treasury, but in Consequence of Appropriations made by Law."
21 Tariff revenue flows to the Treasury. Executive control of tariffs is executive control
22 of revenue — inverting the appropriations structure.

23 **19. Conclusion:** The tariff power is **structurally non-delegable**. The
24 constitutional architecture prohibits executive exercise of this legislative function.

25 **F. Step Six: Position of Assigned Power Analysis**

26 **20.** The tariff power is assigned to "The Congress." This term incorporates all
27 constitutional provisions defining the position:

Definitional Clause	Requirement for "The Congress"	President Satisfies?
Art. I, § 1	"All legislative Powers herein granted shall be vested in a Congress of the United States"	No — President not vested with legislative power
Art. I, § 2	House of Representatives composed of Members chosen by the People	No — President not chosen by direct popular vote for legislative function
Art. I, § 3	Senate composed of two Senators from each State	No — President is one person, not deliberative body
Art. I, § 7	Bills pass both Houses and are presented to President	No — Executive tariffs bypass bicameralism and presentment

21. The Position of Assigned Power is indivisible. A claim that "The President may lay Duties" requires the President to satisfy all definitional clauses constituting "The Congress." The President is not a bicameral legislature. The President is not composed of Representatives chosen by the People. The President is not the Senate.

22. The Logical Syllogism:

Step	Premise
MAJOR	Position "The Congress" = Art. I, § 1 (legislative power vested) + Art. I, § 2 (House) + Art. I, § 3 (Senate) + Art. I, § 7 (bicameral passage + presentment)
MINOR	Section 122 purports to transfer "Congress shall have Power to lay Duties" to the President, but President ≠ bicameral legislature with House origination
CONCLUSION	President ≠ "The Congress" and cannot exercise powers assigned to that constitutionally-defined position

23. **Conclusion:** The Position of Assigned Power test **FAILS**. The President is not "The Congress" and cannot exercise powers the Constitution assigns to that body.

G. Test a Result

24. TARIFF DELEGATION FAILS THE MADISONIAN TEST

Step	Result	Reason
1. Clause Identification	✓ Identified	Art. I, § 8, cl. 1
2. Classification	✓ Classified	Legislative enactment
3. Syllogism	Depends on Step 4	Minor premise requires textual consistency
4. Textual Consistency	FAILS	Same method would validate war-declaration delegation
5. Structural Impossibility	FAILS	Revenue origination, bicameralism, Incompatibility Clause
6. Position Indivisibility	FAILS	President ≠ "The Congress"

25. Section 122 of the Trade Act of 1974, and all similar tariff delegations, are **not made "in Pursuance" of the Constitution** and therefore are not the supreme law of the land under Article VI, Clause 2. Executive-imposed tariffs pursuant to such delegations are **void ab initio**.

III. QUALIFIED IMMUNITY DOCTRINE

A. Step One: Clause Identification

26. Qualified immunity is a judicially-created doctrine that shields government officials from civil liability for constitutional violations unless the violated right was "clearly established." The doctrine claims derivation from multiple sources:

Claimed Source 1: 42 U.S.C. § 1983, which provides:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be

liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress..."

Claimed Source 2: Common law immunity doctrines allegedly incorporated into § 1983.

Claimed Source 3: Article III judicial power to fashion remedies.

27. The constitutional provision § 1983 implements is the Fourteenth Amendment, Section 1:

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

U.S. Const. amend. XIV, § 1.

28. And Section 5:

"The Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

U.S. Const. amend. XIV, § 5.

B. Step Two: Coordinate Action Classification

29. Qualified immunity is a **judicial doctrine**. It was not enacted by Congress — indeed, § 1983's text contains no immunity provision. It was created by courts beginning with *Pierson v. Ray*, 386 U.S. 547 (1967), and expanded in *Harlow v. Fitzgerald*, 457 U.S. 800 (1982).

30. As a judicial doctrine claiming to limit a statutory remedy enacted pursuant to constitutional authority, qualified immunity must derive validly from Article III power without exceeding the "Cases" and "Controversies" limitation.

C. Step Three: Syllogism Construction

31. The claimed syllogism for qualified immunity:

Step	Premise
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MAJOR	Congress enacted § 1983 pursuant to Fourteenth Amendment, § 5 enforcement power
MINOR	Judicial doctrine of qualified immunity is valid interpretation of § 1983 incorporating common law immunities
CONCLUSION	Therefore, qualified immunity is constitutional limitation on § 1983 liability

1 **32.** This syllogism must survive the textual consistency test.

2 **D. Step Four: Textual Consistency Analysis**

3 **33.** Section 1983 uses specific language: "**Every person**" who deprives rights
4 "**shall be liable**" to the injured party.

5 **34.** Parallel Fourteenth Amendment enforcement statutes include:

Statute	Language	Immunity Exception in Text?
42 U.S.C. § 1983	"Every person... shall be liable"	No
42 U.S.C. § 1985	Conspiracy to deprive rights	No
42 U.S.C. § 1986	Neglect to prevent conspiracy	No

6 **35.** Apply the textual consistency test to § 1983's text. The statute says "Every
7 person... shall be liable." If judicial doctrine can read "qualified immunity" into "shall
8 be liable," the **same judicial doctrine** must be capable of reading similar limitations
9 into parallel mandatory language:

Parallel Statutory Language	Can Judicial Doctrine Add Unwritten Exception?	Analysis
"Congress shall make no law... abridging the freedom of speech" (1st Amend.)	No	Courts cannot add "except when government interest is compelling" to text

"The right of the people to be secure... shall not be violated " (4th Amend.)	No	Courts cannot add "unless officer acted in good faith" to text
"No person shall be held to answer... unless on a presentment or indictment" (5th Amend.)	No	Courts cannot add "except when prosecutor determines it unnecessary" to text
"Every person... shall be liable " (§ 1983)	By textual consistency: NO	Courts cannot add "unless right was not clearly established" to text

1 **36.** The interpretive method fails. Judicial doctrine cannot add unwritten
2 exceptions to "Congress shall make no law." Judicial doctrine cannot add unwritten
3 exceptions to "shall not be violated." By the same principle, judicial doctrine cannot
4 add unwritten exceptions to "shall be liable."

5 **37. The absurdity test:** If courts can read "qualified immunity" into "shall be
6 liable," then courts can read:

- 7 • "Qualified speech immunity" into "Congress shall make no law abridging
8 freedom of speech" — permitting speech restrictions unless the speech right
9 was "clearly established"
- 10 • "Qualified search immunity" into "shall not be violated" — permitting warrantless
11 searches unless the Fourth Amendment violation was "clearly established"

12 **38.** These results are manifestly absurd. The interpretive method that produces
13 qualified immunity would produce these absurdities. Therefore, the interpretive
14 method is invalid.

15 **39. Conclusion:** The textual consistency test **FAILS**. Qualified immunity cannot
16 be read into "shall be liable" any more than "qualified speech immunity" can be read
17 into "shall make no law."

18 **E. Step Five: Structural Impossibility Determination**

19 **40.** Qualified immunity is structurally impossible because it constitutes **judicial**
20 **legislation:**

a. **Article I, Section 1:** "All legislative Powers herein granted shall be vested in a Congress." Creating immunity where Congress enacted liability is legislative, not judicial;

b. **Separation of powers:** Courts adjudicate cases; they do not rewrite statutes. Adding "unless the right was clearly established" to "shall be liable" rewrites the statute;

c. **Fourteenth Amendment, Section 5:** "The Congress shall have power to enforce, by appropriate legislation, the provisions of this article." Congress — not courts — determines the scope of Fourteenth Amendment enforcement. Congress determined: "shall be liable." Courts cannot override this determination;

d. **Supremacy Clause:** § 1983 is law "made in Pursuance" of the Fourteenth Amendment. Judicial doctrine contradicting the statute is not supreme over the statute — the statute is supreme over judicial doctrine.

41. Conclusion: Qualified immunity is **structurally impossible** because it constitutes judicial amendment of a congressional statute enacted pursuant to explicit constitutional enforcement authority.

F. Step Six: Position of Assigned Power Analysis

42. The Fourteenth Amendment, Section 5 assigns enforcement power to "The Congress." Judicial creation of immunity limitations constitutes exercise of this enforcement power.

Definitional Clause	Requirement for Fourteenth Amendment Enforcement	Courts Satisfy?
Amend. XIV, § 5	"The Congress shall have power to enforce"	No — Courts are not Congress
Art. I, § 1	"All legislative Powers... vested in a Congress"	No — Courts have judicial power, not legislative
Art. I, § 7	Bicameral passage and presentment	No — Judicial decisions do not pass both Houses

H. Extended Analysis: the Logical and Constitutional Failures of Harlow v. Fitzgerald

47. The six-step Madisonian Test establishes that qualified immunity fails as a matter of constitutional structure. The following extended analysis, drawn from the comprehensive examination in *Kirchner v. Ellison*, No. 0:26-cv-00726-PJS-ECW (D. Minn.), demonstrates the additional logical and constitutional defects embedded in *Harlow v. Fitzgerald* itself.

1. The "Essentially Objective" Logical Fallacy

48. The *Harlow* decision's central holding rests on defining qualified immunity "***essentially in objective terms.**" *Harlow v. Fitzgerald*, 457 U.S. 800, 819 (1982) (*emphasis added*). This linguistic formulation conceals a fundamental logical error: *objectivity admits no degrees**.

49. A standard is either objective or it is not. To describe something as "essentially objective" is to acknowledge that it is not, in fact, objective — that subjective elements remain. If the Court meant that the standard was objective, the qualifier "essentially" is meaningless surplusage. If the Court meant that the standard was mostly-but-not-entirely objective, then it failed to identify what non-objective elements remain and how they should be evaluated.

50. The entire justification for eliminating the subjective prong was that subjective inquiries could not be resolved on summary judgment. If the replacement standard is only "essentially" objective, then it too will require factual determinations that cannot be resolved as a matter of law. The Court claimed to solve the problem of subjective factual inquiries by creating a standard that is, by its own description, not fully objective.

51. This is not mere semantic quibbling. The oxymoronic language reveals the doctrine's intellectual incoherence:

<i>Harlow's</i> Language	Logical Analysis
"Essentially objective"	Oxymoron — objectivity admits no degrees
"Generally shielded"	Ambiguous — admits unnamed exceptions

Combined effect	Standard is neither fully objective nor uniformly applicable
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52. The ambiguity serves a function: it provides cover for discretionary outcomes while claiming objectivity. If a court wishes to grant immunity, officials are "generally shielded." If a court wishes to deny immunity, this particular case falls outside the "general" rule. The word "generally" does no analytical work; it merely signals that the standard is not what it claims to be.

2. The Elimination of Malice: Shielding Knowing Violators

53. Prior to *Harlow*, the governing standard for qualified immunity was articulated in *Wood v. Strickland*, 420 U.S. 308 (1975). Under *Wood*, qualified immunity contained both an objective and a subjective component. An official would be denied immunity if he "knew or reasonably should have known that the action he took within his sphere of official responsibility would violate the constitutional rights of the [plaintiff], or if he took the action with the malicious intention to cause a deprivation of constitutional rights or other injury." *Id.* at 322.

54. *Harlow* eliminated the subjective prong entirely. The Court reasoned that "the subjective element of the good faith defense frequently has proved incompatible with our admonition in *Butz* that insubstantial claims should not proceed to trial." *Harlow*, 457 U.S. at 815-16.

55. The elimination of the subjective malice prong creates a perverse incentive structure:

Official	Knowledge	Action	Result Under <i>Harlow</i>
A	Ignorant of constitutional implications	Commits violation	Immune (no clearly established law)
B	Knows conduct is unconstitutional	Commits same violation	Immune (no clearly established law)

56. The knowing violator is treated identically to the ignorant one. This contradicts basic principles of culpability pervading American law. In criminal law,

intentional wrongdoing is punished more severely than negligent wrongdoing. In tort law, intentional torts are treated more seriously than negligent torts. Only in constitutional tort law, after *Harlow*, is the intentional wrongdoer treated the same as — or better than — the negligent one.

57. The official who carefully researches the law to find constitutional violations that have not yet been prohibited by "clearly established" precedent is rewarded for his diligence in evading accountability.

3. The Catch-22 of "Clearly Established" Rights

58. The "clearly established" requirement has evolved to demand extraordinary factual specificity. Courts routinely hold that constitutional rights must be established "beyond debate" in the specific factual context at issue. General principles — even ones as fundamental as "officers cannot use excessive force" — are deemed insufficient.

59. This requirement creates an insurmountable Catch-22:

Step	Problem
1	Novel constitutional violation occurs
2	By definition, no prior case exists with identical facts
3	Court grants immunity because right not "clearly established"
4	No precedent is created because case dismissed
5	Next victim of same violation faces same problem
6	Right is never "clearly established"

60. The first victim of any novel constitutional violation can never obtain relief. The second victim cannot obtain relief because the first case produced no precedent. The right is never "clearly established" until someone wins a case — but no one can win because the right is not clearly established.

61. The empirical record demonstrates this vicious cycle:

Conduct	Court Finding
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Shooting a child while aiming at the family dog	No clearly established prohibition
Stealing \$225,000 during search warrant execution	No clearly established prohibition
Siccing a police dog on a surrendering suspect	No clearly established prohibition
Tasering a suspect doused in gasoline	No clearly established prohibition

62. These outcomes are the predictable result of a doctrinal framework demanding factual identity between the case at bar and prior precedent. The doctrine has become a one-way ratchet: novel violations are never clearly established, so novel violations are never remedied, so the universe of "clearly established" rights never expands.

4. The Ninth Amendment Inversion

63. *Harlow* grants the benefit of legal uncertainty to the officer. The Ninth Amendment establishes precisely the opposite presumption:

"The enumeration in the Constitution, of certain rights, **shall not be construed to deny or disparage others retained by the people.**"

U.S. Const. amend. IX.

64. This establishes a constitutional rule of construction: where rights are not clearly restricted, they are retained by the people. Legal uncertainty, under the Ninth Amendment, benefits citizens — not government officials.

65. *Harlow* inverts this constitutional structure:

Condition	Ninth Amendment Result	<i>Harlow</i> Result
Law clearly restricts citizen conduct	Government may enforce	N/A
Law unclear whether conduct restricted	Right retained by the people	N/A
Law clearly prohibits officer conduct	N/A	Officer liable
Law unclear whether officer conduct prohibited	N/A	Officer immune

1 **66.** The same uncertainty that should protect the citizen (Ninth Amendment) is
2 converted into a shield protecting the officer. This creates an irreconcilable double
3 standard:

- 4 • **Citizens:** "Ignorance of the law is no excuse" — uncertainty does not protect
5 from enforcement
- 6 • **Officers:** "I didn't know the law" is a complete defense — uncertainty protects
7 from accountability

8 **67.** The contradiction deepens upon examination. If an officer claims immunity
9 because "I didn't know my conduct was unlawful — the law wasn't clearly
10 established," then by the same reasoning, the officer could not have known that the
11 citizen's conduct was unlawful either. The officer cannot simultaneously claim: (1) "I
12 didn't know my conduct was unlawful" (immunity defense), and (2) "I knew the
13 citizen's conduct was unlawful" (basis for enforcement).

14 **5. The Burden Shift Betrayal of Butz v. Economou**

15 **68.** *Butz v. Economou*, 438 U.S. 478 (1978), established that "federal officials
16 who seek absolute exemption from personal liability for unconstitutional conduct must
17 bear the burden of showing that public policy requires an exemption of that scope." *Id.*
18 at 506. The official claiming immunity bore the burden of justification.

19 **69.** *Harlow* inverted this framework:

<i>Butz</i> Framework	<i>Harlow</i> Framework
Official must show justification	Official simply invokes immunity
Citizen's right to redress presumed	Citizen must overcome immunity
Active voice: "must bear the burden of showing"	Passive voice: "are shielded"
Adjudication required	Adjudication foreclosed

20 **70.** The verb "showing" in *Butz* is inherently procedural — one cannot "show"
21 something in a vacuum. The official's burden could only be discharged through a
22 proceeding where the plaintiff participated. *Harlow* replaced this with passive, self-
23 executing language: officials "are shielded from liability." No showing, no
24 demonstration, no adjudication.

1 **71.** A citizen can now suffer a constitutional violation and receive no adjudication
2 whatsoever of whether the violation occurred. The court never determines whether the
3 official's conduct was unconstitutional, whether the plaintiff was injured, or whether
4 the official acted in good faith. The court determines only: has this exact violation
5 been litigated before in this jurisdiction?

6 **6. The Seventh Amendment Violation**

7 **72.** The Seventh Amendment provides: "In Suits at common law, where the value
8 in controversy shall exceed twenty dollars, **the right of trial by jury shall be**
9 **preserved.**" The stated purpose of *Harlow* was to enable summary judgment and avoid
10 trial:

11 "Reliance on the objective reasonableness of an official's conduct... should
12 avoid excessive disruption of government and **permit the resolution of**
13 **many insubstantial claims on summary judgment.**"

14 *Harlow*, 457 U.S. at 818.

15 **73.** The Court created a doctrine whose express purpose is to prevent citizens
16 from exercising their Seventh Amendment right. The Court acknowledged the
17 constitutional problem it was circumventing:

18 "An official's subjective good faith has been considered to be a question of
19 fact that some courts have regarded as **inherently requiring resolution**
20 **by a jury.**"

21 *Id.* at 816 (emphasis added).

22 **74.** Having acknowledged that the subjective prong requires jury resolution, the
23 Court eliminated the subjective prong — thereby eliminating the jury's constitutional
24 role. This is constitutional reasoning inverted. The Constitution dictates procedure;
25 procedure does not dictate the Constitution.

26 **75.** The Court justified its innovation with a statement of obvious truth presented
27 as if it were a novel problem:

28 "It cannot be disputed seriously that claims frequently run against the
29 innocent, as well as the guilty — at a cost not only to the defendant
30 officials, but to society as a whole."

31 *Id.* at 814.

76. But this observation is the foundational condition of all litigation that the Constitution explicitly addresses through due process and the right to trial by jury. The entire purpose of due process is to separate the guilty from the innocent. The entire purpose of trial by jury is to have citizens — not judges — determine contested facts. The Constitution's answer to "innocent people face accusations" is not immunity from adjudication; it is adjudication itself.

7. The Common Law Fiction

77. *Harlow* and predecessor cases claim qualified immunity derives from common law: "As recognized at common law, public officers require this protection." *Harlow*, 457 U.S. at 806. This claim is historically false.

78. At common law, government officials were liable for torts they committed. The defense available was lawful authority — a claim that actions were legally authorized. There was no general immunity from suit for government officials at common law.

79. More fundamentally, there could not have been qualified immunity for constitutional violations at common law because the Constitution did not exist at common law. The common law of England had no concept of constitutional rights enforceable against government officials. The notion that common law provides foundation for immunity from constitutional tort suits is an anachronism.

80. Qualified immunity as articulated in *Harlow* is judicial creation, not common law application:

Element	Common Law Analog?
"Clearly established" requirement	None
Elimination of subjective malice	None
Burden on plaintiff to identify precedent	None
Immunity for constitutional violations	Impossible — Constitution didn't exist

8. The Self-Dealing Problem

81. Chief Justice Burger's dissent observed: "We judges — collectively — have held that the common law provides us with absolute immunity for ourselves with respect to judicial acts, however erroneous or ill-advised." *Harlow*, 457 U.S. at 827 (Burger, C.J., dissenting).

82. This pattern reveals a structural conflict of interest:

Immunity	Created By	Beneficiary
Judicial absolute	Judges	Judges
Prosecutorial absolute	Judges	Prosecutors (work with judges daily)
Presidential absolute	Judges	President (nominates judges)
Qualified immunity	Judges	Executive officials

83. At every step, the judiciary expanded immunity protections for government officials while narrowing remedies available to citizens. Citizens lack representation in this process; they have no institutional voice in developing immunity doctrine.

9. The Seven Constitutional Violations

84. As established in Memorandum N supporting *Kirchner v. Ellison*, judge-made immunity violates seven constitutional provisions:

Constitutional Provision	Guarantee	How Judge-Made Immunity Violates
Article I, § 6	Immunity for legislators (only)	Silence on other officials is meaningful; extending immunity elsewhere requires amendment
Article III	Judicial power to declare law	Courts created law (immunity) rather than declared it — exercising legislative function
Article IV, § 2	Privileges and Immunities uniform across states	Circuit splits create geographic inequality in constitutional remedies
Article V	Constitutional change requires supermajority	Judges changed constitutional structure through doctrine without

	amendment	ratification
Amendment VII	Right to jury trial in civil cases	Court eliminated jury trials for constitutional tort claims
Amendment IX	Rights not enumerated retained by people	Creates protections for government rather than recognizing rights retained by the people
Amendment XIV, § 1	Due process; equal protection	Claims dismissed without hearing; officials receive protection citizens do not

1 **85.** Judge-made immunity is not one constitutional violation but seven. The
2 doctrine that purports to "balance" government efficiency against citizen rights in fact
3 nullifies citizen rights across multiple constitutional provisions while claiming
4 legitimacy it does not possess.

5 **10. The Ninth Amendment: Declaring Law Versus Creating Law**

6 **86.** The Ninth Amendment marks the textual boundary between the judicial
7 function (declaring law) and the legislative function (creating law). This provides a
8 categorical test for derivative doctrines:

Derivative Doctrine	Beneficiary	Pre-Existence	9th Amendment	Judicial Function
Right to privacy	The people	Rights pre-exist, are "retained"	Compliant	Declaring law
Freedom of association	The people	Rights pre-exist, are "retained"	Compliant	Declaring law
Right to travel	The people	Rights pre-exist, are "retained"	Compliant	Declaring law
Miranda warnings	The people	Protects pre-existing 5th Amend. right	Compliant	Declaring law
Exclusionary rule	The people	Protects pre-existing 4th Amend. right	Compliant	Declaring law
Judicial absolute immunity	Government	Cannot pre-exist; must be created	Non-compliant	Creating law

Prosecutorial absolute immunity	Government	Cannot pre-exist; must be created	Non-compliant	Creating law
Qualified immunity	Government	Cannot pre-exist; must be created	Non-compliant	Creating law

1 **87.** Rights "retained by the people" **pre-exist** government. Courts that recognize
2 such rights declare what already exists. Government immunities **cannot pre-exist**
3 government — they must be **created**. When courts manufacture immunities for
4 government officials, they exercise legislative power through judicial procedure.

5 **88.** James Madison, drafting what became the Ninth Amendment, explained its
6 purpose:

7 "It has been objected also against a bill of rights, that, by enumerating
8 particular exceptions to the grant of power, it would disparage those rights
9 which were not placed in that enumeration; and it might follow by
10 implication, that those rights which were not singled out, **were intended**
11 **to be assigned into the hands of the General Government**, and were
12 consequently insecure."

13 *1 Annals of Cong. 439 (1789).*

14 **89.** Madison designed the Ninth Amendment specifically to prevent
15 unenumerated matters from being "assigned into the hands of the General
16 Government." Judge-made immunity does exactly what Madison prohibited — it
17 assigns unenumerated protections (immunity) "into the hands of the General
18 Government."

19 **11. The Civil Rights Connection**

20 **90.** The immunity doctrine expanded in direct response to civil rights litigation:

Year	Case	Context
1961	<i>Monroe v. Pape</i>	Revived § 1983 as civil rights vehicle
1967	<i>Pierson v. Ray</i>	First qualified immunity — civil rights workers arrested in Mississippi
1976	<i>Imbler v. Pachtman</i>	Prosecutorial absolute immunity

1978	<i>Butz v. Economou</i>	Federal official qualified immunity
1982	<i>Harlow v. Fitzgerald</i>	Modern qualified immunity doctrine

91. The amendment Madison designed to protect against government overreach was violated precisely when its protection was most needed: when formerly enslaved people and their descendants sought constitutional accountability from state officials. The Ninth Amendment's dormancy was not evidence of irrelevance; it was evidence that constitutional accountability had not yet expanded to trigger the government's interest in evading it.

I. Application to *Kirchner v. Ellison*: the Qualified Immunity Paradox

92. The January 2026 incidents in Minnesota demonstrate qualified immunity's practical consequences and reveal a profound paradox: Minnesota law enforcement officers themselves became victims of the doctrine designed to protect them.

1. Federal Agents Killing Citizens in Minnesota

93. Federal agents killed two United States citizens in Minneapolis in seventeen days:

Date	Victim	Circumstances
January 7, 2026	Renee Nicole Good , 42	Unarmed; observing ICE enforcement; shot while her minor child was present
January 24, 2026	Alex Pretti , 37	Lawful gun owner with valid permit; video shows he was disarmed before being shot in the back

94. On January 8, 2026 — less than 24 hours after Good's death — Vice President Vance declared that ICE agents are "protected by absolute immunity." This legal concept does not exist in American jurisprudence. Every immunity recognized in American law is qualified by boundaries; an immunity without boundaries is not immunity but sovereignty.

2. Minnesota Officers as Victims of Qualified Immunity

95. In January 2026, multiple off-duty Minnesota law enforcement officers experienced constitutional violations by federal agents — yet qualified immunity renders them without remedy:

Brooklyn Park Police Chief Mark Bruley reported that an off-duty female officer — a United States citizen — was subjected to an armed traffic stop by ICE agents. Agents "boxed her in" with vehicles, approached with "guns drawn," and demanded immigration "paperwork." When the officer attempted to record the encounter, "the phone was knocked out of her hands." Chief Bruley confirmed: **"every off-duty officer targeted by ICE in Brooklyn Park over the past two weeks has been a person of color."**

See Kirchner v. Ellison, Exhibit A.

96. The constitutional violations are clear:

Amendment	Violation	Evidence
Fourth	Unreasonable seizure	Drawing weapons and detaining U.S. citizen without reasonable suspicion
First	Prior restraint	Physically knocking phone from hands to prevent recording
Fourteenth	Equal protection	"Every" targeted officer was "a person of color"

97. Yet under *Harlow*, the ICE agents who perpetrated these violations face no civil liability unless the officers can identify a prior case with nearly identical facts establishing the specific conduct was unlawful. The absence of such precedent becomes self-perpetuating.

3. The Paradox Exposed

98. The profound irony: Minnesota Statute § 626.89 — which provides special protections to peace officers during disciplinary investigations — provides **no protection whatsoever** when those same officers become victims of federal constitutional violations.

1 **102.** This cycle ensures that novel forms of constitutional violation — or familiar
2 violations against novel victim classes — remain permanently shielded. The *Harlow*
3 standard does not merely protect officials who could not reasonably know their
4 conduct was unlawful; it protects officials who commit violations no court has
5 previously addressed, regardless of how obviously unconstitutional that conduct may
6 be.

7 **J. Extended Test B Conclusion**

8 **103.** The Madisonian six-step test establishes that qualified immunity fails as a
9 matter of constitutional structure. The extended *Harlow* analysis demonstrates that it
10 also fails as a matter of logical coherence, historical accuracy, and constitutional
11 legitimacy across seven separate provisions.

12 **104.** The January 2026 incidents in Minnesota — where federal agents killed two
13 citizens and violated the rights of off-duty police officers who themselves receive
14 special state protections — reveal qualified immunity's lethal practical consequences
15 and expose the doctrine's fundamental incoherence.

16 **105. QUALIFIED IMMUNITY FAILS THE MADISONIAN TEST —**
17 **EXTENDED ANALYSIS**

Failure Category	Specific Defects
Logical Failures	"Essentially objective" oxymoron; elimination of malice shields knowing violators; Catch-22 of "clearly established"
Precedential Failures	Inverts <i>Butz</i> burden; eliminates <i>Wood</i> subjective prong
Textual Failures	Contradicts § 1983's "shall be liable"; inverts Ninth Amendment
Constitutional Violations	Art. I § 6, Art. III, Art. IV § 2, Art. V, Amend. VII, Amend. IX, Amend. XIV
Historical Failures	False common law foundation; judicial self-dealing

Practical Consequences	Vicious cycle; officers become victims of doctrine designed to protect them
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1 **106.** The combined argument is complete: qualified immunity is a judicial doctrine
2 without constitutional foundation, without logical coherence, without historical basis,
3 and without textual support. It violates seven constitutional provisions while claiming
4 to serve interests the Constitution addresses through due process and jury trial. The
5 doctrine should be recognized as constitutionally illegitimate and abandoned.

6 **IV. H.R. 1 EXECUTIVE ORIGINATION**

7 **A. Step One: Clause Identification**

8 **107.** The Origination Clause is contained in Article I, Section 7, Clause 1:

9 **"All Bills for raising Revenue shall originate in the House of**
10 **Representatives;** but the Senate may propose or concur with
11 Amendments as on other Bills."

12 *U.S. Const. art. I, § 7, cl. 1.*

13 **108.** This clause establishes the **Major Premise**: All revenue bills shall originate in
14 the House.

15 **B. Step Two: Coordinate Action Classification**

16 **109.** H.R. 1, styled as the "One Big Beautiful Bill," is a **legislative enactment** —
17 specifically, a revenue bill containing tax provisions, tariff modifications, and spending
18 cuts.

19 **110.** The coordinate action at issue is the **process** by which H.R. 1 came into
20 existence: evidence demonstrates Executive origination despite formal House
21 introduction. This constitutes **executive enforcement** (or more precisely, executive
22 *pre-enforcement*) — the Executive Branch drafting legislation that the Constitution
23 requires originate in the House.

C. Step Three: Syllogism Construction

111. The claimed syllogism for H.R. 1's validity:

Step	Premise
MAJOR	"All Bills for raising Revenue shall originate in the House of Representatives"
MINOR	H.R. 1 formally originated in the House (bears "H.R." designation, introduced by House member)
CONCLUSION	Therefore, H.R. 1 satisfies the Origination Clause

112. The Minor Premise is factually false. Evidence demonstrates:

- President Trump repeatedly declared H.R. 1 "**my** one big, beautiful bill" (possessive attribution)
- Official White House communications identified it as "**President Donald Trump's** One, Big, Beautiful Bill"
- The unprecedented pattern of Byrd Rule violations (fifteen major provisions stripped) indicates executive-agency drafting unfamiliar with reconciliation constraints
- Trump's possessive declarations constitute party admissions under Fed. R. Evid. 801(d)(2)(A)

113. Formal House introduction does not satisfy "originate." The Constitution requires substantive origination — the legislative conception and drafting must occur in the House, not merely the formal introduction.

D. Step Four: Textual Consistency Analysis

114. Article I, Section 7 contains the following clauses:

Clause	Requirement
Cl. 1	"All Bills for raising Revenue shall originate in the House "
Cl. 2	"Every Bill which shall have passed the House of Representatives and the Senate , shall, before it become a Law, be presented to the President "
Cl. 2	President may approve (sign) or return with Objections (veto)

Cl. 2	Override requires "two thirds of that House" in each chamber
Cl. 3	"Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary... shall be presented to the President"

115. Apply the textual consistency test. If "originate in the House" can be satisfied by formal introduction despite Executive drafting, the **same interpretive method** must apply to parallel clauses:

Parallel Clause	If Formal Compliance Suffices	Absurd Result
"passed the House and the Senate"	Formal notation of passage without actual vote	Bills become law without congressional deliberation
"presented to the President"	Formal transmittal without actual presentation	President never reviews legislation
"two thirds of that House" for override	Formal declaration of two-thirds without actual count	Veto overridden by declaration
"Concurrence of the Senate and House"	Formal concurrence notation without deliberation	Resolutions pass without congressional action

116. If H.R. 1 "originated in the House" because it bears "H.R." designation despite Executive drafting, then a bill "passed the House" if it bears a "passed" notation despite never being voted on.

117. Conclusion: The textual consistency test **FAILS**. "Originate" requires substantive origination, not formal designation. The same principle that requires actual passage requires actual origination.

E. Step Five: Structural Impossibility Determination

118. Executive origination of revenue bills is structurally impossible:
a. **Express House assignment:** The Origination Clause assigns revenue bill origination to "the House of Representatives" — not to any other body, and certainly not to the Executive;

b. **Structural purpose:** The clause exists because the House, with proportional representation and direct election, was considered closest to the people. Revenue extraction must begin with the people's most direct representatives. Executive origination defeats this structural purpose entirely;

c. **Incompatibility Clause confirmation:** If the same person cannot hold legislative and executive office (Art. I, § 6, cl. 2), a fortiori the Executive cannot originate legislation the Constitution assigns to the House;

d. **Separation of powers:** The Executive "shall take Care that the Laws be faithfully executed" (Art. II, § 3) — executed, not originated. Originating legislation is a legislative function.

119. Conclusion: Executive origination of revenue bills is **structurally impossible**. The Constitution assigns this function exclusively to the House.

F. Step Six: Position of Assigned Power Analysis

120. The Origination Clause assigns the origination function to "the House of Representatives." This term incorporates all constitutional provisions defining the position:

Definitional Clause	Requirement for "House of Representatives"	Executive Satisfies?
Art. I, § 2, Cl. 1	"composed of Members chosen every second Year by the People"	No — President not chosen by direct popular vote for legislative function
Art. I, § 2, Cl. 3	Representatives apportioned among States according to population	No — President represents nation, not proportionally apportioned
Art. I, § 2, Cl. 5	"The House of Representatives shall chuse their Speaker"	No — Executive branch has no Speaker

121. The Executive is not "the House of Representatives." The Executive cannot exercise functions the Constitution assigns to that body.

122. Conclusion: The Position of Assigned Power test **FAILS**. The Executive is not "the House of Representatives" and cannot originate revenue bills.

G. Test C Result

123. H.R. 1 EXECUTIVE ORIGINATION FAILS THE MADISONIAN TEST

Step	Result	Reason
1. Clause Identification	✓ Identified	Art. I, § 7, cl. 1
2. Classification	✓ Classified	Executive action (pre-enforcement drafting)
3. Syllogism	FAILS	Minor premise factually false — Executive originated
4. Textual Consistency	FAILS	Same method would permit "formal passage" without vote
5. Structural Impossibility	FAILS	House assignment, separation of powers
6. Position Indivisibility	FAILS	Executive ≠ "House of Representatives"

124. H.R. 1, to the extent it was originated by the Executive Branch despite formal House introduction, **violates the Origination Clause** and is not a valid law "made in Pursuance" of the Constitution.

V. IEEPA Tariff Authority

A. Step One: Clause Identification

125. The International Emergency Economic Powers Act (IEEPA), 50 U.S.C. § 1701 et seq., was invoked by President Trump to impose tariffs. The claimed constitutional derivation involves two clauses:

Claimed Delegation Source: Article I, Section 8, Clause 1 (Duties power delegated via IEEPA)

Claimed Executive Authority: Article II emergency powers (inherent or statutory)

126. As established in Test A, the tariff power is assigned to "The Congress" by Article I, Section 8, Clause 1.

B. Step Two: Coordinate Action Classification

127. IEEPA is a **legislative enactment** that purports to grant the President emergency economic powers, including (as claimed) tariff authority.

128. The executive tariff orders issued pursuant to IEEPA are **executive enforcement** claiming statutory authorization.

C. Step Three: Syllogism Construction

129. The claimed syllogism for IEEPA tariff authority:

Step	Premise
MAJOR	"The Congress shall have Power To lay... Duties" (Art. I, § 8, cl. 1)
MINOR	IEEPA is law "in Pursuance thereof" delegating emergency tariff authority to President
CONCLUSION	Therefore, President may impose tariffs under IEEPA during declared emergencies

130. This syllogism fails at multiple levels, as the Supreme Court confirmed in *Learning Resources, Inc. v. Trump*, 607 U.S. ____ (2026).

D. Step Four: Textual Consistency Analysis

131. IEEPA's claimed tariff authority presents the same textual consistency problem as Section 122 (Test A), with an additional layer: the claimed derivation through "emergency powers."

1 **132.** If IEEPA can delegate tariff authority during emergencies, the **same**
2 **delegation mechanism** must be capable of delegating parallel Article I, Section 8
3 powers during emergencies:

Parallel Clause	Can IEEPA Delegate During Emergency?	Analysis
Declare War (Cl. 11)	No	"Emergency war declaration" power cannot be delegated
Coin Money (Cl. 5)	No	"Emergency currency" power cannot be delegated
Constitute Tribunals (Cl. 9)	No	"Emergency courts" cannot be created by Executive
Raise Armies (Cl. 12)	No	"Emergency conscription" power cannot be delegated
Lay Duties (Cl. 1)	By textual consistency: NO	

4 **133.** The "emergency" qualifier does not change the constitutional analysis. An
5 emergency does not create power where none exists. As Madison demonstrated in his
6 1806 legal opinion, even facing Aaron Burr's armed conspiracy, the Executive lacked
7 authority to deploy troops absent explicit congressional authorization. Emergency does
8 not imply power; it reveals the necessity of obtaining proper authorization.

9 **134. Conclusion:** The textual consistency test **FAILS**. IEEPA cannot delegate
10 tariff authority any more than it could delegate war-declaration authority.

11 **E. Step Five: Structural Impossibility Determination**

12 **135.** IEEPA tariff authority is structurally impossible for all reasons stated in Test
13 A, plus:

14 a. **IEEPA's actual text:** IEEPA authorizes the President to "investigate, block during
15 the pendency of an investigation, regulate, direct and compel, nullify, void, prevent or
16 prohibit, any acquisition, holding, withholding, use, transfer, withdrawal,
17 transportation, importation or exportation of, or dealing in, or exercising any right,

power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest." 50 U.S.C. § 1702(a)(1)(B).

This is regulatory authority over property and transactions — not tariff-imposing authority;

b. **No tariff language:** IEEPA does not mention tariffs, duties, imposts, or revenue.

Tariff authority cannot be implied from general emergency powers;

c. ***Learning Resources* confirmation:** The Supreme Court held that "When Congress grants the power to impose tariffs, it does so clearly and with careful constraints. It did neither here." 607 U.S. at ___, slip op. at 17.

136. Conclusion: IEEPA tariff authority is **structurally impossible**. The statute does not authorize tariffs, and emergency does not create implied power.

F. Step Six: Position of Assigned Power Analysis

137. As established in Test A, the tariff power is assigned to "The Congress." The President does not satisfy the definitional clauses constituting "The Congress."

138. Conclusion: The Position of Assigned Power test **FAILS**. The President is not "The Congress."

G. Test D Result

139. IEEPA TARIFF AUTHORITY FAILS THE MADISONIAN TEST

Step	Result	Reason
1. Clause Identification	✓ Identified	Art. I, § 8, cl. 1
2. Classification	✓ Classified	Legislative enactment + Executive enforcement
3. Syllogism	Depends on Step 4	Minor premise requires textual consistency
4. Textual Consistency	FAILS	Same method would validate emergency war-declaration delegation
5. Structural	FAILS	IEEPA text, no tariff language, <i>Learning</i>

Impossibility		<i>Resources</i>
6. Position Indivisibility	FAILS	President ≠ "The Congress"

1 **140.** Executive tariffs imposed under IEEPA are **void ab initio**. The statute does
2 not authorize tariffs, and even if it purported to, such authorization would be
3 unconstitutional delegation of Article I, Section 8 power.

4 **VI. ADMINISTRATIVE RULEMAKING DELEGATION**

5 **A. Step One: Clause Identification**

6 **141.** Administrative rulemaking authority — the power of executive agencies to
7 promulgate regulations with the force of law — claims derivation from congressional
8 delegation. The constitutional clause at issue is Article I, Section 1:

9 **"All legislative Powers herein granted shall be vested in a Congress of**
10 the United States, which shall consist of a Senate and House of
11 Representatives."

12 *U.S. Const. art. I, § 1.*

13 **142.** This is the Legislative Vesting Clause. It establishes the **Major Premise**: All
14 legislative powers shall be vested in Congress.

15 **B. Step Two: Coordinate Action Classification**

16 **143.** Administrative rulemaking delegation occurs through **legislative enactments**
17 (enabling statutes) that purport to grant agencies authority to promulgate rules with
18 legal effect.

19 **144.** The actual rulemaking is **executive enforcement** — agencies exercising
20 claimed delegated authority.

21 **C. Step Three: Syllogism Construction**

22 **145.** The claimed syllogism for administrative rulemaking:

1)		
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1 **149.** If Congress can delegate legislative power to agencies, then the President can
2 delegate executive power to Congress, and courts can delegate judicial power to
3 agencies. These results are manifestly absurd. The interpretive method is invalid.

4 **150. The linguistic analysis:** "All" means "every one of; the whole quantity of."
5 "Vested" means "conferred as a right." "Shall be" is mandatory. The clause therefore
6 means: "Every one of the legislative powers herein granted is mandatorily conferred as
7 a right in a Congress."

8 **151.** Delegation contradicts each element:

- 9 • **"All":** Delegation transfers some powers elsewhere — no longer "all" in
10 Congress
- 11 • **"Vested":** Delegation divests what was vested — logical contradiction
- 12 • **"Shall be":** Delegation makes vesting optional — contradicts mandatory
13 language

14 **152. Conclusion:** The textual consistency test **FAILS**. "All legislative Powers...
15 shall be vested in a Congress" prohibits delegation by its terms.

16 **E. Step Five: Structural Impossibility Determination**

17 **153.** Administrative rulemaking delegation is structurally impossible:

18 a. **Legislative Vesting Clause:** Article I, Section 1 uses "All" and "shall be vested" —
19 language of exclusive, mandatory assignment that admits no delegation;

20 b. **Bicameralism and presentment:** Article I, Section 7 requires legislation to pass
21 both Houses and be presented to the President. Agency rules bypass bicameralism
22 (one agency, not two houses) and presentment (President does not sign agency rules);

23 c. **Incompatibility Clause:** If the same person cannot hold legislative and executive
24 office (Art. I, § 6, cl. 2), a fortiori executive agencies cannot exercise legislative
25 power;

26 d. **Non-delegation is definitionally identical to separation of powers:** As established
27 in the main Memorandum, separation of powers and non-delegation are synonyms.
28 You cannot have "separation" while also having "delegation."

154. Conclusion: Administrative rulemaking delegation is **structurally impossible**. The Legislative Vesting Clause prohibits it by its terms.

F. Step Six: Position of Assigned Power Analysis

155. Legislative power is vested in "a Congress of the United States, which shall consist of a Senate and House of Representatives."

Definitional Clause	Requirement for Legislative Power	Agencies Satisfy?
Art. I, § 1	"vested in a Congress"	No — agencies are not Congress
Art. I, § 1	"consist of a Senate and House"	No — agencies have neither
Art. I, § 2	House members chosen by the People	No — agency officials appointed
Art. I, § 3	Senators elected by each State	No — agency officials not elected
Art. I, § 7	Bills pass both Houses	No — agency rules issued unilaterally

156. Agencies are not "a Congress." They do not "consist of a Senate and House of Representatives." They cannot exercise powers vested in that constitutionally-defined body.

157. Conclusion: The Position of Assigned Power test **FAILS**. Agencies are not "a Congress of the United States."

G. Test E Result

158. ADMINISTRATIVE RULEMAKING DELEGATION FAILS THE MADISONIAN TEST

Step	Result	Reason
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1 **163.** Claimed authority derives from executive discretion, inherent Article II
2 power, or statutory authorization (though the Impoundment Control Act of 1974
3 largely prohibits the practice).

4 **C. Step Three: Syllogism Construction**

5 **164.** The claimed syllogism for impoundment authority:

Step	Premise
MAJOR	"No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law"
MINOR	Executive discretion permits declining to draw appropriated money
CONCLUSION	Therefore, the President may impound appropriated funds

6 **165.** The Minor Premise misreads the clause. "No Money shall be drawn... but in
7 Consequence of Appropriations" establishes appropriation as the *necessary condition*
8 for expenditure — not as merely a *permissive condition*.

9 **D. Step Four: Textual Consistency Analysis**

10 **166.** The Appropriations Clause operates in conjunction with the Take Care
11 Clause. Article II, Section 3 requires the President to "take Care that the Laws be
12 faithfully executed."

13 **167.** An appropriation is a law. "Faithful execution" of an appropriation law means
14 spending the money Congress appropriated for the purposes Congress specified.

15 **168.** Apply the textual consistency test. If the Executive may decline to execute
16 appropriation laws (impoundment), the **same executive discretion** must permit
17 declining to execute other laws:

Parallel Law	If Executive May Decline to Execute	Absurd Result
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172. Conclusion: Impoundment is **structurally impossible**. It violates the Appropriations Clause, the Take Care Clause, and the separation of powers.

F. Step Six: Position of Assigned Power Analysis

173. The Appropriations Clause assigns appropriation power to Congress ("Appropriations made by Law"). The Executive's role is execution, not appropriation.

Definitional Clause	Constitutional Assignment	Executive Role
Art. I, § 9, cl. 7	"Appropriations made by Law"	Execute, not appropriate
Art. I, § 8, cl. 1	"Congress shall have Power... to pay the Debts"	Execute payment, not determine payment
Art. II, § 3	"shall take Care that the Laws be faithfully executed"	Execute appropriation laws

174. The Executive is assigned execution, not appropriation discretion. Impoundment represents executive exercise of appropriation power — the power to determine what money shall be spent. This power is assigned to Congress.

175. Conclusion: The Position of Assigned Power test **FAILS**. The appropriation/non-appropriation decision belongs to Congress. The Executive cannot exercise this power through impoundment.

G. Test F Result

176. IMPOUNDMENT AUTHORITY FAILS THE MADISONIAN TEST

Step	Result	Reason
1. Clause Identification	✓ Identified	Art. I, § 9, cl. 7; Art. II, § 3
2. Classification	✓ Classified	Executive (non-)enforcement
3. Syllogism	FAILS	Minor premise misreads Appropriations

		Clause
4. Textual Consistency	FAILS	Same discretion would nullify all laws
5. Structural Impossibility	FAILS	Appropriations Clause, Take Care Clause, separation
6. Position Indivisibility	FAILS	Executive assigned execution, not appropriation

177. Impoundment — the Executive's refusal to spend congressionally appropriated funds — **lacks constitutional foundation**. It violates the Appropriations Clause, the Take Care Clause, and the constitutional assignment of the power of the purse to Congress.

VIII. PROSECUTORIAL NON-PROSECUTION AGREEMENTS

A. Step One: Clause Identification

178. Prosecutorial non-prosecution agreements (NPAs) and deferred prosecution agreements (DPAs) claim derivation from two constitutional sources, as analyzed in the main Memorandum:

Claimed Source 1: The Pardon Power, Article II, Section 2, Clause 1:

"The President... shall have Power to grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment."

Claimed Source 2: The Take Care Clause, Article II, Section 3:

"he shall take Care that the Laws be faithfully executed"

B. Step Two: Coordinate Action Classification

179. NPAs and DPAs are claimed as **executive enforcement** discretion — prosecutors exercising claimed inherent authority to decline prosecution in exchange for cooperation or compliance.

180. To the extent this authority is claimed as "prosecutorial discretion" established by courts, it is also a **judicial doctrine**.

C. Step Three: Syllogism Construction

181. Claimed Pardon Power derivation:

Step	Premise
MAJOR	"The President shall have Power to grant Reprieves and Pardons" (Art. II, § 2)
MINOR	Prosecutorial discretion is derivative of pardon power permitting prosecutors to grant effective immunity
CONCLUSION	Therefore, prosecutors may enter NPAs as derivative pardon authority

182. Claimed Take Care derivation:

Step	Premise
MAJOR	"He shall take Care that the Laws be faithfully executed" (Art. II, § 3)
MINOR	Prosecutorial discretion is derivative of Take Care duty permitting prosecutors to determine enforcement priorities
CONCLUSION	Therefore, prosecutors may enter NPAs as exercise of enforcement discretion

D. Step Four: Textual Consistency Analysis

183. As demonstrated in the main Memorandum, both derivations fail the textual consistency test.

Pardon Power derivation (Art. II, § 2):

Parallel Clause	Can Prosecutorial Discretion Derive?	Analysis
Commander in Chief	No	Prosecutors cannot command military

Make Treaties	No	Prosecutors cannot make treaties
Appoint Ambassadors, Judges	No	Prosecutors cannot appoint
Recess Appointments	No	Prosecutors cannot fill vacancies
Grant Pardons	By textual consistency: NO	

1 **Take Care derivation** (Art. II, § 3):

Parallel Clause	Can Prosecutorial Discretion Derive?	Analysis
Give Congress State of the Union	No	Prosecutors cannot address Congress
Convene both Houses	No	Prosecutors cannot convene Congress
Receive Ambassadors	No	Prosecutors cannot conduct diplomacy
Commission Officers	No	Prosecutors cannot commission
Take Care Laws be faithfully executed	By textual consistency: NO	

2 **184. Conclusion:** The textual consistency test **FAILS** for both claimed sources.

3 **E. Step Five: Structural Impossibility Determination**

4 **185.** As established in the main Memorandum:

- 5 a. **Pardon Power:** Expressly assigned to "The President" using personal language;
6 structurally non-delegable; historical derivation from royal prerogative vested in single
7 accountable officer;
- 8 b. **Take Care Clause:** Uses personal pronoun "he" referring to the President;
9 subordinate officers have independent oath under Article VI creating separate
10 constitutional duty; no textual mechanism for transferring President's personal duty;

c. **Incompatibility Clause confirmation:** Personal accumulation forbidden;
institutional accumulation forbidden a fortiori.

186. Conclusion: Prosecutorial immunity-granting authority is **structurally impossible** under both claimed sources.

F. Step Six: Position of Assigned Power Analysis

187. As established in the main Memorandum:

Definitional Clause	President	Prosecutor
Art. II, § 1, Cl. 1	Executive Power vested	Not vested
Art. II, § 1, Cl. 2-3	Electoral selection	Appointed
Art. II, § 1, Cl. 8	Oath to "preserve, protect and defend"	Different oath (Art. VI)

188. Prosecutors do not satisfy the definitional clauses constituting "the President." They cannot exercise powers assigned to that position.

189. Conclusion: The Position of Assigned Power test **FAILS**. Prosecutors are not "the President."

G. Test G Result

190. PROSECUTORIAL NON-PROSECUTION AGREEMENTS FAIL THE MADISONIAN TEST

Step	Result	Reason
1. Clause Identification	✓ Identified	Art. II, § 2; Art. II, § 3
2. Classification	✓ Classified	Executive enforcement / Judicial doctrine
3. Syllogism	Depends on Step 4	Minor premises require textual consistency
4. Textual	FAILS	Neither Pardon nor Take Care

Consistency		derivation valid
5. Structural Impossibility	FAILS	Personal assignment, oath distinction
6. Position Indivisibility	FAILS	Prosecutors ≠ "the President"

191. Prosecutorial non-prosecution agreements, insofar as they claim constitutional authority to grant immunity or effective immunity from prosecution, are **without constitutional foundation**. The sole valid immunity mechanism is 18 U.S.C. §§ 6001-6005, which authorizes only use immunity with court order and Attorney General approval.

IX. SUMMARY OF RESULTS

192. The Madisonian Separation of Powers Objective Compliance Test has been applied to seven categories of coordinate government action:

Test	Coordinate Action	Steps Failed	Constitutional Status
A	Tariff Delegation (Trade Act / § 122)	4, 5, 6	UNCONSTITUTIONAL
B	Qualified Immunity Doctrine	4, 5, 6	UNCONSTITUTIONAL
C	H.R. 1 Executive Origination	3, 4, 5, 6	UNCONSTITUTIONAL
D	IEEPA Tariff Authority	4, 5, 6	UNCONSTITUTIONAL
E	Administrative Rulemaking Delegation	3, 4, 5, 6	UNCONSTITUTIONAL
F	Impoundment Authority	3, 4, 5, 6	UNCONSTITUTIONAL
G	Prosecutorial Non-Prosecution Agreements	4, 5, 6	UNCONSTITUTIONAL

193. Every tested coordinate action fails multiple steps. The pattern is consistent: claimed delegations fail because:

1 a. **Textual consistency (Step 4):** The interpretive method that validates the claimed
2 delegation would also validate absurd delegations of parallel powers;

3 b. **Structural impossibility (Step 5):** The constitutional architecture — vesting
4 clauses, personal assignments, Incompatibility Clause — prohibits the claimed transfer;

5 c. **Position indivisibility (Step 6):** The claimed actor does not satisfy the definitional
6 clauses constituting the constitutional position to which power is assigned.

7 **194.** The test is objective and reproducible. Any court applying the six-step
8 methodology will reach these same conclusions because the test depends on textual
9 analysis and logical consistency, not policy judgment.

10 **195.** Madison's framework is vindicated: **Separation of Powers = Non-Delegation**
11 **= Liberty.** Each failed test represents an accumulation of power that Madison defined
12 as tyranny. The test identifies these accumulations; Article III equity jurisdiction
13 provides the enforcement mechanism.

14 **X. Historical Validation: Applying the Madisonian Test to Adjudicated** 15 **Unconstitutional Actions**

16 **196.** The following section validates the Madisonian Separation of Powers
17 Objective Compliance Test by applying it to coordinate government actions the
18 Supreme Court has already found unconstitutional. If the Madisonian Test produces
19 "UNCONSTITUTIONAL" for actions the Court invalidated, the methodology is
20 validated as consistent with established constitutional jurisprudence.

21 **197.** Twenty historical cases are analyzed. Full six-step analyses are available
22 upon request; condensed results are presented below.

23 **A. Test H: *Ins v. Chadha* (1983) — Legislative Veto**

24 **Constitutional Provisions:** Art. I, §§ 1, 7 (Bicameralism and Presentment)

25 **Coordinate Action:** One-house resolution overturning executive deportation
26 determination without bicameral passage or presidential presentment.

Step	Result	Reason
1. Clause Identification	✓	Art. I, §§ 1, 7
2. Classification	✓	Legislative enactment (purported)
3. Syllogism	FAILS	Minor premise omits bicameralism/presentment requirements
4. Textual Consistency	FAILS	"Every Order, Resolution, or Vote" admits no exception
5. Structural Impossibility	FAILS	Bypasses bicameralism, eliminates presentment
6. Position Indivisibility	FAILS	One house ≠ "Congress"

Supreme Court: UNCONSTITUTIONAL. *Chadha*, 462 U.S. at 957-58.

Madisonian Test: UNCONSTITUTIONAL ✓

B. Test I: Clinton v. City of New York (1998) — Line Item Veto

Constitutional Provisions: Art. I, § 7 (Presentment Clause)

Coordinate Action: Presidential "cancellation" of individual spending items after signing bill into law—effectively amending enacted statutes.

Step	Result	Reason
1. Clause Identification	✓	Art. I, § 7
2. Classification	✓	Legislative enactment + Executive action
3. Syllogism	FAILS	Cannot delegate power to amend statutes
4. Textual Consistency	FAILS	Cancellation = amendment = addition
5. Structural Impossibility	FAILS	No constitutional mechanism for partial approval
6. Position Indivisibility	FAILS	President ≠ "Congress"

Supreme Court: UNCONSTITUTIONAL. *Clinton*, 524 U.S. at 438-39.

Madisonian Test: UNCONSTITUTIONAL ✓

C. Test J: *Youngstown Sheet & Tube v. Sawyer* (1952) — Steel Seizure

Constitutional Provisions: Art. II, §§ 1, 2, 3 (Executive Power; Take Care Clause)

Coordinate Action: Presidential seizure of steel mills during Korean War without statutory authorization—executive lawmaking.

Step	Result	Reason
1. Clause Identification	✓	Art. II, §§ 1, 2, 3
2. Classification	✓	Executive action
3. Syllogism	FAILS	Seizure is legislation, not execution
4. Textual Consistency	FAILS	Same power would permit total nationalization
5. Structural Impossibility	FAILS	Take Care Clause requires laws to execute
6. Position Indivisibility	FAILS	President ≠ "Congress"

Supreme Court: UNCONSTITUTIONAL. *Youngstown*, 343 U.S. at 585, 587.

Madisonian Test: UNCONSTITUTIONAL ✓

D. Test K: *A.l.a. Schechter Poultry v. United States* (1935) — Nira Delegation

Constitutional Provisions: Art. I, § 1 (Legislative Vesting Clause)

Coordinate Action: Congressional delegation of code-making authority to President and private trade associations without intelligible principle.

Step	Result	Reason
1. Clause Identification	✓	Art. I, § 1
2. Classification	✓	Legislative enactment + Executive/private

		action
3. Syllogism	FAILS	Logical contradiction: cannot vest by divesting
4. Textual Consistency	FAILS	Same method permits delegation of all powers
5. Structural Impossibility	FAILS	No intelligible principle; private delegation
6. Position Indivisibility	FAILS	President and trade associations ≠ "Congress"

Supreme Court: UNCONSTITUTIONAL. *Schechter*, 295 U.S. at 529, 542.

Madisonian Test: UNCONSTITUTIONAL ✓

E. Test L: Bowsher v. Synar (1986) — Comptroller General

Constitutional Provisions: Art. I, § 1; Art. II, §§ 1, 3 (Separation of Executive Function)

Coordinate Action: Vesting executive budget-cutting authority in Comptroller General removable only by Congress.

Step	Result	Reason
1. Clause Identification	✓	Art. I, § 1; Art. II, §§ 1, 3
2. Classification	✓	Legislative enactment + Executive function
3. Syllogism	FAILS	Removal structure defeats executive assignment
4. Textual Consistency	FAILS	Same structure transfers all execution to Congress
5. Structural Impossibility	FAILS	Congressional control of executive officers
6. Position Indivisibility	FAILS	Legislative-removable officer ≠ executive officer

Supreme Court: UNCONSTITUTIONAL. *Bowsher*, 478 U.S. at 734.

Madisonian Test: UNCONSTITUTIONAL ✓

F. Test M: Panama Refining Co. v. Ryan (1935) — "Hot Oil" Delegation

Constitutional Provisions: Art. I, §§ 1, 8 (Legislative Vesting; Commerce Power)

Coordinate Action: Congressional delegation to President to prohibit interstate oil shipments without any standards or criteria.

Step	Result	Reason
1. Clause Identification	✓	Art. I, §§ 1, 8
2. Classification	✓	Legislative enactment + Executive enforcement
3. Syllogism	FAILS	Delegation without standards is not regulation
4. Textual Consistency	FAILS	Same method permits delegation of all commerce power
5. Structural Impossibility	FAILS	No intelligible principle
6. Position Indivisibility	FAILS	President ≠ "Congress"

Supreme Court: UNCONSTITUTIONAL. *Panama Refining*, 293 U.S. at 415.

Madisonian Test: UNCONSTITUTIONAL ✓

G. Test N: Printz v. United States (1997) — Commandeering State Officers

Constitutional Provisions: Art. I, § 8; 10th Amendment (Federalism)

Coordinate Action: Federal statute commanding state law enforcement officers to conduct background checks—commandeering state executive officers.

Step	Result	Reason
1. Clause Identification	✓	Art. I, § 8; 10th Amendment
2. Classification	✓	Legislative enactment + Federal direction of state officers
3. Syllogism	FAILS	"Proper" incorporates federalism limitations

4. Textual Consistency	FAILS	Same power would permit total commandeering
5. Structural Impossibility	FAILS	Destroys dual sovereignty, confuses accountability
6. Position Indivisibility	FAILS	State officers $\neq$ federal executive officers

Supreme Court: UNCONSTITUTIONAL. *Printz*, 521 U.S. at 935.

Madisonian Test: UNCONSTITUTIONAL ✓

H. Test O: New York v. United States (1992) — Commandeering State Legislatures

Constitutional Provisions: Art. I, § 8; 10th Amendment (Federalism)

Coordinate Action: Federal statute requiring states to either take title to radioactive waste or enact legislation—commandeering state legislatures.

Step	Result	Reason
1. Clause Identification	✓	Art. I, § 8; 10th Amendment
2. Classification	✓	Legislative enactment commanding state legislation
3. Syllogism	FAILS	Commerce power does not include commandeering
4. Textual Consistency	FAILS	Same power would permit total commandeering
5. Structural Impossibility	FAILS	Destroys dual sovereignty and republican guarantee
6. Position Indivisibility	FAILS	State legislatures $\neq$ "Congress"

Supreme Court: UNCONSTITUTIONAL. *New York*, 505 U.S. at 162, 188.

Madisonian Test: UNCONSTITUTIONAL ✓

I. Test P: Seila Law LLC v. Cfpb (2020) — Single-Director Removal Restriction

Constitutional Provisions: Art. II, §§ 1, 3 (Executive Power; Take Care Clause)

Coordinate Action: Single director with substantial executive authority removable only for cause—unprecedented insulation from presidential control.

Step	Result	Reason
1. Clause Identification	✓	Art. II, §§ 1, 3
2. Classification	✓	Legislative limitation on executive removal
3. Syllogism	FAILS	Single director + substantial power + for-cause = unprecedented
4. Textual Consistency	FAILS	Same power would permit insulating all officers
5. Structural Impossibility	FAILS	Evades Take Care duty; concentrated independent power
6. Position Indivisibility	FAILS	Independent Director ≠ subordinate executive officer

Supreme Court: UNCONSTITUTIONAL. *Seila Law*, 140 S. Ct. at 2197, 2206.

Madisonian Test: UNCONSTITUTIONAL ✓

J. Test Q: Buckley v. Valeo (1976) — Congressional Appointment

Constitutional Provisions: Art. II, § 2, cl. 2 (Appointments Clause)

Coordinate Action: FEC commissioners appointed by Congress exercising executive enforcement powers.

Step	Result	Reason
1. Clause Identification	✓	Art. II, § 2, cl. 2
2. Classification	✓	Legislative enactment + Legislative appointment

3. Syllogism	FAILS	Appointments Clause excludes Congress
4. Textual Consistency	FAILS	Same power permits congressional appointment of all officers
5. Structural Impossibility	FAILS	Congress excluded from appointment power
6. Position Indivisibility	FAILS	Congress $\neq$ President, Courts, or Department Heads

Supreme Court: UNCONSTITUTIONAL. *Buckley*, 424 U.S. at 140.

Madisonian Test: UNCONSTITUTIONAL ✓

K. Test R: Free Enterprise Fund v. Pcaob (2010) — Dual for-Cause Removal

Constitutional Provisions: Art. II, §§ 1, 3 (Executive Power; Take Care Clause)

Coordinate Action: PCAOB members removable only for cause by SEC
commissioners themselves removable only for cause—dual insulation.

Step	Result	Reason
1. Clause Identification	✓	Art. II, §§ 1, 3
2. Classification	✓	Legislative limitation on executive removal
3. Syllogism	FAILS	Stacking protections exponentially diminishes control
4. Textual Consistency	FAILS	No principled limit to stacking
5. Structural Impossibility	FAILS	Severs President from subordinate officers
6. Position Indivisibility	FAILS	Dual-insulated officers $\neq$ subordinate officers

Supreme Court: UNCONSTITUTIONAL. *Free Enterprise Fund*, 561 U.S. at 492, 498.

Madisonian Test: UNCONSTITUTIONAL ✓

L. Test S: Northern Pipeline v. Marathon Pipe Line (1982) — Non-Article III Adjudication

Constitutional Provisions: Art. III, § 1 (Judicial Vesting Clause)

Coordinate Action: Bankruptcy judges without Article III tenure/salary protections adjudicating private rights.

Step	Result	Reason
1. Clause Identification	✓	Art. III, § 1
2. Classification	✓	Legislative enactment + Non-Article III adjudication
3. Syllogism	FAILS	Bankruptcy Clause is legislative, not judicial power
4. Textual Consistency	FAILS	Same method permits stripping all cases from Article III
5. Structural Impossibility	FAILS	Tenure/salary protections essential to judicial independence
6. Position Indivisibility	FAILS	Non-Article III judges ≠ Article III judges

Supreme Court: UNCONSTITUTIONAL. *Northern Pipeline*, 458 U.S. at 87.

Madisonian Test: UNCONSTITUTIONAL ✓

M. Test T: Plaut v. Spendthrift Farm (1995) — Reopening Final Judgments

Constitutional Provisions: Art. III, § 1 (Judicial Power; Finality)

Coordinate Action: Statute requiring federal courts to reopen final judgments—
legislative direction of judicial outcomes.

Step	Result	Reason
1. Clause Identification	✓	Art. III, § 1
2. Classification	✓	Legislative enactment directing judicial

		outcomes
3. Syllogism	FAILS	Jurisdiction differs from power to reopen judgments
4. Textual Consistency	FAILS	Same power permits reopening any judgment
5. Structural Impossibility	FAILS	Destroys finality, judicial independence
6. Position Indivisibility	FAILS	Congress $\neq$ judiciary

Supreme Court: UNCONSTITUTIONAL. *Plaut*, 514 U.S. at 219, 240.

Madisonian Test: UNCONSTITUTIONAL ✓

N. Test U: Collins v. Yellen (2021) — Fhfa Single-Director Removal

Constitutional Provisions: Art. II, §§ 1, 3 (Executive Power; Take Care Clause)

Coordinate Action: FHFA director with vast authority over mortgage markets removable only for cause.

Step	Result	Reason
1. Clause Identification	✓	Art. II, §§ 1, 3
2. Classification	✓	Legislative limitation on executive removal
3. Syllogism	FAILS	Single director + substantial power + for-cause
4. Textual Consistency	FAILS	Same power insulates all single-director agencies
5. Structural Impossibility	FAILS	Evades Take Care duty; concentrated independent power
6. Position Indivisibility	FAILS	Independent Director $\neq$ subordinate officer

Supreme Court: UNCONSTITUTIONAL. *Collins*, 141 S. Ct. at 1783, 1787.

Madisonian Test: UNCONSTITUTIONAL ✓

O. Test V: United States v. Arthrex (2021) — Api Final Authority

Constitutional Provisions: Art. II, § 2, cl. 2 (Appointments Clause)

Coordinate Action: Administrative Patent Judges issuing final, unreviewable decisions while appointed as inferior officers.

Step	Result	Reason
1. Clause Identification	✓	Art. II, § 2, cl. 2
2. Classification	✓	Legislative enactment structuring appointments
3. Syllogism	FAILS	Unreviewable authority = not inferior
4. Textual Consistency	FAILS	Same method makes all officers inferior
5. Structural Impossibility	FAILS	Unreviewable authority requires principal officer status
6. Position Indivisibility	FAILS	Officers with final authority ≠ inferior officers

Supreme Court: UNCONSTITUTIONAL (remedied by requiring Director review).
Arthrex, 141 S. Ct. at 1985, 1988.

Madisonian Test: UNCONSTITUTIONAL ✓

P. Test W: Lucia v. Sec (2018) — Alj Appointment

Constitutional Provisions: Art. II, § 2, cl. 2 (Appointments Clause)

Coordinate Action: SEC ALJs with significant authority appointed by staff rather than by head of department.

Step	Result	Reason
1. Clause Identification	✓	Art. II, § 2, cl. 2
2. Classification	✓	Executive practice bypassing Appointments Clause

3. Syllogism	FAILS	Significant authority = officer status
4. Textual Consistency	FAILS	Same method makes all officers employees
5. Structural Impossibility	FAILS	Staff not permissible appointing authority
6. Position Indivisibility	FAILS	Staff ≠ President, Courts, or Department Heads

Supreme Court: UNCONSTITUTIONAL. *Lucia*, 138 S. Ct. at 2055.

Madisonian Test: UNCONSTITUTIONAL ✓

**Q. Test X: Mwaa v. Citizens for Abatement of Aircraft Noise (1991) —
Congressional Board**

Constitutional Provisions: Art. I, §§ 6, 7 (Incompatibility; Presentment)

Coordinate Action: Board of Review composed of congressmen exercising veto over airport authority decisions—legislative exercise of executive power.

Step	Result	Reason
1. Clause Identification	✓	Art. I, §§ 6, 7
2. Classification	✓	Legislative enactment creating congressional Board
3. Syllogism	FAILS	Congress cannot exercise executive authority
4. Textual Consistency	FAILS	Same method permits congressional boards everywhere
5. Structural Impossibility	FAILS	Incompatibility Clause; presentment requirements
6. Position Indivisibility	FAILS	Congressmen ≠ executive officers

Supreme Court: UNCONSTITUTIONAL. *MWAA*, 501 U.S. at 276-77.

Madisonian Test: UNCONSTITUTIONAL ✓

R. Test Y: United States v. Klein (1872) — Prescribing Judicial Outcomes

Constitutional Provisions: Art. III, § 1; Art. II, § 2 (Judicial Power; Pardon Power)

Coordinate Action: Statute directing courts to treat presidential pardons as proof of disloyalty and dismiss claims—legislative prescription of judicial outcomes.

Step	Result	Reason
1. Clause Identification	✓	Art. III, § 1; Art. II, § 2
2. Classification	✓	Legislative enactment prescribing outcomes
3. Syllogism	FAILS	Jurisdiction ≠ outcome prescription
4. Textual Consistency	FAILS	Same power eliminates judicial independence
5. Structural Impossibility	FAILS	Congress cannot decide cases
6. Position Indivisibility	FAILS	Congress ≠ judiciary

Supreme Court: UNCONSTITUTIONAL. *Klein*, 80 U.S. at 147-48.

Madisonian Test: UNCONSTITUTIONAL ✓

S. Test Z: Zivotofsky v. Kerry (2015) — Congressional Recognition

Constitutional Provisions: Art. II, § 3 (Receive Ambassadors—Recognition Power)

Coordinate Action: Statute requiring passports to list "Israel" as birthplace for Jerusalem-born citizens—congressional exercise of recognition power.

Step	Result	Reason
1. Clause Identification	✓	Art. II, § 3
2. Classification	✓	Legislative enactment directing executive power
3. Syllogism	FAILS	Passport power does not include recognition power

4. Textual Consistency	FAILS	Same power permits congressional foreign policy
5. Structural Impossibility	FAILS	Recognition is exclusively executive
6. Position Indivisibility	FAILS	Congress $\neq$ President

Supreme Court: UNCONSTITUTIONAL. *Zivotofsky*, 576 U.S. at 28, 32.

Madisonian Test: UNCONSTITUTIONAL ✓

T. Test AA: Nlr b v. Noel Canning (2014) — Recess Appointments

Constitutional Provisions: Art. II, § 2, cls. 2-3 (Appointments; Recess Appointments)

Coordinate Action: Presidential appointments during pro forma Senate sessions—claimed recess appointment authority when Senate not in recess.

Step	Result	Reason
1. Clause Identification	✓	Art. II, § 2, cls. 2-3
2. Classification	✓	Executive action claiming recess appointment authority
3. Syllogism	FAILS	"Recess" condition not satisfied
4. Textual Consistency	FAILS	Executive cannot determine Senate's session status
5. Structural Impossibility	FAILS	Appointments require Senate consent or genuine recess
6. Position Indivisibility	FAILS	Neither constitutional pathway satisfied

Supreme Court: UNCONSTITUTIONAL (9-0). *Noel Canning*, 573 U.S. at 519-20, 550.

Madisonian Test: UNCONSTITUTIONAL ✓

XI. EXTENDED HISTORICAL VALIDATION

198. The following sixteen cases extend the validation beyond the twenty cases above. Full six-step analyses are available in the Extended Madisonian Validation Research document upon request.

A. Test AB: Stern v. Marshall (2011) — Bankruptcy Court Adjudication

Constitutional Provisions: Art. III, § 1 (Judicial Power; Tenure and Salary Protections)

Coordinate Action: Bankruptcy court without Article III protections entering final judgment on state law counterclaim.

Step	Result	Reason
1. Clause Identification	✓	Art. III, § 1
2. Classification	✓	Legislative enactment (28 U.S.C. § 157)
3. Syllogism	FAILS	Cannot vest Art. III power in non-Art. III court
4. Textual Consistency	FAILS	Method would eliminate Art. III protections
5. Structural Impossibility	FAILS	Tenure and salary requirements violated
6. Position Indivisibility	FAILS	Bankruptcy judges lack Art. III attributes

Supreme Court: UNCONSTITUTIONAL (5-4). *Stern*, 564 U.S. at 469.

Madisonian Test: UNCONSTITUTIONAL ✓

B. Test AC: Hamdan v. Rumsfeld (2006) — Military Commission Authority

Constitutional Provisions: Art. I, § 8, cls. 9, 14; Art. II, § 2, cl. 1 (Congress Creates Tribunals)

Coordinate Action: Executive establishment of military commissions without congressional authorization.

Step	Result	Reason
1. Clause Identification	✓	Art. I, § 8, cls. 9, 14; Art. II, § 2, cl. 1
2. Classification	✓	Executive action (Military Order)
3. Syllogism	FAILS	Commander in Chief ≠ tribunal creation
4. Textual Consistency	FAILS	Would permit executive courts
5. Structural Impossibility	FAILS	Congress creates tribunals
6. Position Indivisibility	FAILS	Wrong branch exercising power

Supreme Court: Commission lacked authorization. *Hamdan*, 548 U.S. at 567.

Madisonian Test: UNCONSTITUTIONAL ✓

C. Test AD: City of Boerne v. Flores (1997) — Congressional Override of Court

Constitutional Provisions: 14th Amend., § 5 (Enforcement Power)

Coordinate Action: RFRA attempting to override Supreme Court's interpretation of Free Exercise Clause—Congress redefining constitutional rights.

Step	Result	Reason
1. Clause Identification	✓	14th Amend., § 5
2. Classification	✓	Legislative enactment (RFRA)
3. Syllogism	FAILS	Enforcement ≠ redefinition
4. Textual Consistency	FAILS	Would permit congressional override of all Court decisions
5. Structural Impossibility	FAILS	Violates judicial interpretive supremacy

6. Position Indivisibility	FAILS	Congress exercised judicial function
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Supreme Court: UNCONSTITUTIONAL (6-3). *City of Boerne*, 521 U.S. at 519, 527-29.

Madisonian Test: UNCONSTITUTIONAL ✓

D. Test AE: United States v. Lopez (1995) — Commerce Clause Limits

Constitutional Provisions: Art. I, § 8, cl. 3 (Commerce Clause)

Coordinate Action: Gun-Free School Zones Act criminalizing gun possession near schools—no substantial effect on interstate commerce.

Step	Result	Reason
1. Clause Identification	✓	Art. I, § 8, cl. 3
2. Classification	✓	Legislative enactment (GFSZA)
3. Syllogism	FAILS	No substantial effect on commerce
4. Textual Consistency	FAILS	Would eliminate all limits on federal power
5. Structural Impossibility	FAILS	Violates federalism structure
6. Position Indivisibility	FAILS	Fits no Commerce Clause category

Supreme Court: UNCONSTITUTIONAL (5-4). *Lopez*, 514 U.S. at 551.

Madisonian Test: UNCONSTITUTIONAL ✓

E. Test AF: United States v. Morrison (2000) — Violence Against Women Act

Constitutional Provisions: Art. I, § 8, cl. 3; 14th Amend., § 5

Coordinate Action: VAWA civil remedy for gender-motivated violence—not economic activity, no state action.

Step	Result	Reason
1. Clause Identification	✓	Art. I, § 8, cl. 3; 14th Amend., § 5
2. Classification	✓	Legislative enactment (VAWA § 13981)
3. Syllogism	FAILS	Not economic activity; no state action
4. Textual Consistency	FAILS	Would eliminate federalism limits
5. Structural Impossibility	FAILS	Violates federalism and state action requirement
6. Position Indivisibility	FAILS	Fits neither Commerce nor Section 5 power

Supreme Court: UNCONSTITUTIONAL (5-4). *Morrison*, 529 U.S. at 601-02.

Madisonian Test: UNCONSTITUTIONAL ✓

F. Test AG: Medellin v. Texas (2008) — Executive Treaty Enforcement

Constitutional Provisions: Art. I, § 8, cl. 18; Art. II, §§ 2-3

Coordinate Action: Presidential memorandum directing state courts to comply with ICJ judgment—executive creation of domestic law.

Step	Result	Reason
1. Clause Identification	✓	Art. I, § 8, cl. 18; Art. II, §§ 2-3
2. Classification	✓	Executive action (Presidential Memorandum)
3. Syllogism	FAILS	No self-executing treaty; no domestic law
4. Textual Consistency	FAILS	Would give President legislative power
5. Structural Impossibility	FAILS	President cannot create domestic law
6. Position Indivisibility	FAILS	Legislative function, not executive

Supreme Court: UNCONSTITUTIONAL (6-3). *Medellin*, 552 U.S. at 498-99.

Madisonian Test: UNCONSTITUTIONAL ✓

G. Test AH: Murphy v. Ncaa (2018) — Anticommandeering

Constitutional Provisions: 10th Amendment; Art. I, § 8, cl. 3

Coordinate Action: PASPA prohibiting states from authorizing sports gambling—
commandeering state legislatures.

Step	Result	Reason
1. Clause Identification	✓	10th Amendment; Art. I, § 8, cl. 3
2. Classification	✓	Legislative enactment (PASPA)
3. Syllogism	FAILS	PASPA commands states, not private actors
4. Textual Consistency	FAILS	Would permit unlimited commandeering
5. Structural Impossibility	FAILS	Federalism prevents commandeering
6. Position Indivisibility	FAILS	Congress lacks this power

Supreme Court: UNCONSTITUTIONAL (7-2). *Murphy*, slip op. at 18.

Madisonian Test: UNCONSTITUTIONAL ✓

H. Test AI: Boumediene v. Bush (2008) — Suspension Clause

Constitutional Provisions: Art. I, § 9, cl. 2 (Suspension Clause)

Coordinate Action: MCA stripping habeas jurisdiction for Guantanamo detainees
without constitutional suspension.

Step	Result	Reason
1. Clause Identification	✓	Art. I, § 9, cl. 2

2. Classification	✓	Legislative enactment (MCA § 7)
3. Syllogism	FAILS	No rebellion or invasion existed
4. Textual Consistency	FAILS	Suspension conditions would be nullified
5. Structural Impossibility	FAILS	Habeas is constitutionally protected
6. Position Indivisibility	FAILS	Constitutional conditions not met

Supreme Court: UNCONSTITUTIONAL (5-4). *Boumediene*, 553 U.S. at 771, 792.

Madisonian Test: UNCONSTITUTIONAL ✓

I. Test AJ: Shelby County v. Holder (2013) — Equal Sovereignty

Constitutional Provisions: 15th Amend., § 2; Equal Sovereignty Principle

Coordinate Action: VRA preclearance formula based on decades-old data—perpetual differential treatment of states.

Step	Result	Reason
1. Clause Identification	✓	15th Amend., § 2; Equal Sovereignty
2. Classification	✓	Legislative enactment (VRA § 4(b))
3. Syllogism	FAILS	Formula based on obsolete data
4. Textual Consistency	FAILS	Would permit perpetual differential treatment
5. Structural Impossibility	FAILS	Equal sovereignty violated
6. Position Indivisibility	FAILS	Not "appropriate" to current needs

Supreme Court: UNCONSTITUTIONAL (5-4). *Shelby County*, 570 U.S. at 557.

Madisonian Test: UNCONSTITUTIONAL ✓

J. Test AK: Alden v. Maine (1999) — State Sovereign Immunity

Constitutional Provisions: 10th Amend.; Structural Sovereign Immunity

Coordinate Action: FLSA private suit against state in state court—Article I cannot abrogate state immunity.

Step	Result	Reason
1. Clause Identification	✓	10th Amend.; Structural sovereign immunity
2. Classification	✓	Legislative enactment (FLSA § 216(b))
3. Syllogism	FAILS	Article I cannot abrogate state immunity
4. Textual Consistency	FAILS	Would destroy state sovereignty
5. Structural Impossibility	FAILS	States retain sovereign dignity
6. Position Indivisibility	FAILS	Commerce Clause lacks this power

Supreme Court: UNCONSTITUTIONAL (5-4). *Alden*, 527 U.S. at 712.

Madisonian Test: UNCONSTITUTIONAL ✓

K. Test AL: Seminole Tribe v. Florida (1996) — 11th Amendment Abrogation

Constitutional Provisions: 11th Amend.; Art. I, § 8, cl. 3

Coordinate Action: IGRA authorizing Indian tribes to sue states—Article I cannot abrogate 11th Amendment immunity.

Step	Result	Reason
1. Clause Identification	✓	11th Amend.; Art. I, § 8, cl. 3
2. Classification	✓	Legislative enactment (IGRA § 2710)
3. Syllogism	FAILS	Article I lacks abrogation power
4. Textual	FAILS	Would nullify sovereign immunity

Consistency		
5. Structural Impossibility	FAILS	Immunity is structural
6. Position Indivisibility	FAILS	Only § 5 of 14th can abrogate

Supreme Court: UNCONSTITUTIONAL (5-4). *Seminole Tribe*, 517 U.S. at 47, 72-73.

Madisonian Test: UNCONSTITUTIONAL ✓

L. Test AM: Carter v. Carter Coal Co. (1936) — Production Vs. Commerce

Constitutional Provisions: Art. I, § 8, cl. 3 (Commerce Clause)

Coordinate Action: Coal Act regulating labor relations in mining—production is not commerce.

Step	Result	Reason
1. Clause Identification	✓	Art. I, § 8, cl. 3
2. Classification	✓	Legislative enactment (Coal Act)
3. Syllogism	FAILS	Production ≠ commerce
4. Textual Consistency	FAILS	Would nationalize all industry
5. Structural Impossibility	FAILS	Production is state matter
6. Position Indivisibility	FAILS	Commerce Clause doesn't reach production

Supreme Court: UNCONSTITUTIONAL (5-4). *Carter Coal*, 298 U.S. at 303-309.

Madisonian Test: UNCONSTITUTIONAL ✓

M. Test AV: Bond v. United States (2011) — Individual Standing for Federalism

Constitutional Provisions: Tenth Amendment; Art. III Standing

Coordinate Action: Federal prosecution under Chemical Weapons Act for local assault—individual challenging federalism violation.

Step	Result	Reason
1. Clause Identification	✓	Tenth Amendment, Art. III standing
2. Classification	✓	Executive prosecution under federal statute
3. Syllogism	FAILS	"States" ≠ exclusive beneficiaries
4. Textual Consistency	✓ CONFIRMS	Individuals enforce structural provisions
5. Structural Impossibility	✓ CONFIRMS	Federalism protects individual liberty
6. Position Indivisibility	✓ CONFIRMS	Tenth Amendment protects "the people"

Supreme Court: STANDING GRANTED (9-0). *Bond*, 564 U.S. at 220, 222.

Madisonian Test: STANDING CONFIRMED ✓

N. Test BD: NFIB v. Sebelius (2012) — Spending Clause Coercion

Constitutional Provisions: Art. I, § 8, cl. 1; Tenth Amendment

Coordinate Action: ACA threatening loss of all Medicaid funding if states refused expansion—economic coercion.

Step	Result	Reason
1. Clause Identification	✓	Art. I, § 8, cl. 1; Tenth Amendment
2. Classification	✓	Legislative enactment (ACA Medicaid)
3. Syllogism	FAILS	Coercion ≠ legitimate condition

4. Textual Consistency	FAILS	Would allow unlimited federal mandates
5. Structural Impossibility	FAILS	States must have genuine choice
6. Position Indivisibility	FAILS	Spending power has limits

Supreme Court: UNCONSTITUTIONAL (7-2). *NFIB*, 567 U.S. at 581-82, 585.

Madisonian Test: UNCONSTITUTIONAL ✓

O. Test BF: Myers v. United States (1926) — Presidential Removal Power

Constitutional Provisions: Art. II, §§ 1, 2, 3

Coordinate Action: Statute requiring Senate consent for removal of postmasters—
congressional interference with executive removal.

Step	Result	Reason
1. Clause Identification	✓	Art. II, §§ 1, 2, 3
2. Classification	✓	Legislative restriction on removal
3. Syllogism	FAILS	Advice and consent limited to appointments
4. Textual Consistency	FAILS	Would subordinate executive
5. Structural Impossibility	FAILS	Removal inherent in executive power
6. Position Indivisibility	FAILS	Removal power exclusive to President

Supreme Court: UNCONSTITUTIONAL (6-3). *Myers*, 272 U.S. at 176.

Madisonian Test: UNCONSTITUTIONAL ✓

P. Test BJ: Springer v. Philippine Islands (1928) — Legislative Officers
Exercising Executive Power

Constitutional Provisions: Separation of Powers; Executive Vesting

Coordinate Action: Legislature assigning executive function (voting government stock) to legislative officers.

Step	Result	Reason
1. Clause Identification	✓	Separation of powers; Executive vesting
2. Classification	✓	Legislative exercise of executive power
3. Syllogism	FAILS	Management functions are executive
4. Textual Consistency	FAILS	Would merge branches
5. Structural Impossibility	FAILS	Legislature cannot perform executive acts
6. Position Indivisibility	FAILS	Executive power exclusive to executive

Supreme Court: UNCONSTITUTIONAL (6-3). *Springer*, 277 U.S. at 199, 201.

Madisonian Test: UNCONSTITUTIONAL ✓

XII. HISTORICAL VALIDATION: SUMMARY OF RESULTS

199. The Madisonian Separation of Powers Objective Compliance Test has been applied to thirty-six coordinate government actions the Supreme Court has addressed:

Test	Case	Year	Madisonian Result	Court Holding	Match
H	<i>INS v. Chadha</i>	1983	UNCONSTITUTIONAL	UNCONSTITUTIONAL	✓
I	<i>Clinton v. City of New York</i>	1998	UNCONSTITUTIONAL	UNCONSTITUTIONAL	✓
J	<i>Youngstown v.</i>	1952	UNCONSTITUTIONAL	UNCONSTITUTIONAL	✓

	<i>Sawyer</i>		TUTIONAL	TUTIONAL	
K	<i>Schechter Poultry</i>	1935	UNCONSTI TUTIONAL	UNCONSTI TUTIONAL	✓
L	<i>Bowsher v. Synar</i>	1986	UNCONSTI TUTIONAL	UNCONSTI TUTIONAL	✓
M	<i>Panama Refining</i>	1935	UNCONSTI TUTIONAL	UNCONSTI TUTIONAL	✓
N	<i>Printz v. United States</i>	1997	UNCONSTI TUTIONAL	UNCONSTI TUTIONAL	✓
O	<i>New York v. United States</i>	1992	UNCONSTI TUTIONAL	UNCONSTI TUTIONAL	✓
P	<i>Seila Law v. CFPB</i>	2020	UNCONSTI TUTIONAL	UNCONSTI TUTIONAL	✓
Q	<i>Buckley v. Valeo</i>	1976	UNCONSTI TUTIONAL	UNCONSTI TUTIONAL	✓
R	<i>Free Enterprise Fund v. PCAOB</i>	2010	UNCONSTI TUTIONAL	UNCONSTI TUTIONAL	✓
S	<i>Northern Pipeline v. Marathon</i>	1982	UNCONSTI TUTIONAL	UNCONSTI TUTIONAL	✓
T	<i>Plaut v. Spendthrift Farm</i>	1995	UNCONSTI TUTIONAL	UNCONSTI TUTIONAL	✓
U	<i>Collins v. Yellen</i>	2021	UNCONSTI TUTIONAL	UNCONSTI TUTIONAL	✓
V	<i>United States v. Arthrex</i>	2021	UNCONSTI TUTIONAL	UNCONSTI TUTIONAL	✓
W	<i>Lucia v. SEC</i>	2018	UNCONSTI TUTIONAL	UNCONSTI TUTIONAL	✓
X	<i>MWAA v. CAAN</i>	1991	UNCONSTI TUTIONAL	UNCONSTI TUTIONAL	✓
Y	<i>United States v. Klein</i>	1872	UNCONSTI TUTIONAL	UNCONSTI TUTIONAL	✓
Z	<i>Zivotofsky v. Kerry</i>	2015	UNCONSTI TUTIONAL	UNCONSTI TUTIONAL	✓
AA	<i>NLRB v. Noel</i>	2014	UNCONSTI	UNCONSTI	✓

	<i>Canning</i>		TUTIONAL	TUTIONAL	
AB	<i>Stern v. Marshall</i>	2011	UNCONSTI TUTIONAL	UNCONSTI TUTIONAL	✓
AC	<i>Hamdan v. Rumsfeld</i>	2006	UNCONSTI TUTIONAL	UNCONSTI TUTIONAL	✓
AD	<i>City of Boerne v. Flores</i>	1997	UNCONSTI TUTIONAL	UNCONSTI TUTIONAL	✓
AE	<i>United States v. Lopez</i>	1995	UNCONSTI TUTIONAL	UNCONSTI TUTIONAL	✓
AF	<i>United States v. Morrison</i>	2000	UNCONSTI TUTIONAL	UNCONSTI TUTIONAL	✓
AG	<i>Medellin v. Texas</i>	2008	UNCONSTI TUTIONAL	UNCONSTI TUTIONAL	✓
AH	<i>Murphy v. NCAA</i>	2018	UNCONSTI TUTIONAL	UNCONSTI TUTIONAL	✓
AI	<i>Boumediene v. Bush</i>	2008	UNCONSTI TUTIONAL	UNCONSTI TUTIONAL	✓
AJ	<i>Shelby County v. Holder</i>	2013	UNCONSTI TUTIONAL	UNCONSTI TUTIONAL	✓
AK	<i>Alden v. Maine</i>	1999	UNCONSTI TUTIONAL	UNCONSTI TUTIONAL	✓
AL	<i>Seminole Tribe v. Florida</i>	1996	UNCONSTI TUTIONAL	UNCONSTI TUTIONAL	✓
AM	<i>Carter v. Carter Coal Co.</i>	1936	UNCONSTI TUTIONAL	UNCONSTI TUTIONAL	✓
AY	<i>Bond v. United States</i>	2011	STANDING CONFIRME D	STANDIN G GRANTED	✓
BD	<i>NFIB v. Sebelius</i>	2012	UNCONSTI TUTIONAL	UNCONSTI TUTIONAL	✓
BF	<i>Myers v. United States</i>	1926	UNCONSTI TUTIONAL	UNCONSTI TUTIONAL	✓
BJ	<i>Springer v. Philippine Islands</i>	1928	UNCONSTI TUTIONAL	UNCONSTI TUTIONAL	✓

200. Perfect Correspondence: The Madisonian Test produces "UNCONSTITUTIONAL" for thirty-five coordinate government actions the Supreme Court invalidated, plus confirms standing for one federalism challenge (*Bond*). The methodology is validated as consistent with established constitutional jurisprudence spanning 154 years (1872-2021).

A. Analysis of Step Failures

201. The thirty-five unconstitutional-action cases demonstrate consistent failure patterns:

Step	Cases Failing	Percentage
Step 3 (Syllogism)	H-AA, AB-AM, BD, BF, BJ	100% (35/35)
Step 4 (Textual Consistency)	H-AA, AB-AM, BD, BF, BJ	100% (35/35)
Step 5 (Structural Impossibility)	H-AA, AB-AM, BD, BF, BJ	100% (35/35)
Step 6 (Position Indivisibility)	H-AA, AB-AM, BD, BF, BJ	100% (35/35)

202. Every unconstitutional action fails **all four substantive steps** (Steps 3-6). This is not coincidental — it reflects the integrated nature of the constitutional structure. An action that violates separation of powers typically:

- Cannot construct a valid syllogism (the claimed derivation fails)
- Fails textual consistency (the interpretive method produces absurdities)
- Is structurally impossible (the constitutional architecture prohibits it)
- Fails position indivisibility (the actor doesn't satisfy the definitional clauses)

B. Comparison: Tests a-G Vs. Tests H-Aa

203. The original Tests (A-G) produced "UNCONSTITUTIONAL" for coordinate actions not yet adjudicated by the Supreme Court. The validation Tests (H-AA plus extended tests AB-BJ) produced results matching the Court's holdings.

Category	Tests	Madisonian Result	Court Status
Original Tests	A-G	All UNCONSTITUTIONAL	Pending or partial adjudication
Validation Tests	H-AA, AB-AM, BD, BF, BJ	All UNCONSTITUTIONAL	All confirmed UNCONSTITUTIONAL (35/35)
Standing Test	AY (<i>Bond</i>)	STANDING CONFIRMED	STANDING GRANTED (1/1)

204. The perfect correspondence between Madisonian Test results and Supreme Court holdings validates the methodology. When the Court has addressed the coordinate action, it reached the same conclusion the Madisonian Test produces.

205. This validation supports applying the Madisonian Test to coordinate actions the Court has not yet addressed (Tests A-G). The test correctly identifies unconstitutional actions across 154 years of Supreme Court jurisprudence (1872-2021); there is no reason to believe it fails for actions the Court has not yet reviewed.

C. Implications for Tests A-G

206. The validated Madisonian Test produces "UNCONSTITUTIONAL" for:

Test	Coordinate Action	Implication
A	Tariff Delegation	Section 122 and similar delegations are unconstitutional
B	Qualified Immunity	<i>Harlow</i> doctrine is unconstitutional judicial legislation
C	H.R. 1 Executive Origination	Executive-originated revenue bills violate Origination Clause
D	IEEPA Tariff Authority	Executive tariffs under IEEPA are void (confirmed by <i>Learning Resources</i>)
E	Administrative Rulemaking	Rulemaking as legislative power lacks constitutional foundation
F	Impoundment	Executive refusal to spend appropriated

		funds is unconstitutional
G	Prosecutorial NPAs	Immunity-granting authority without statutory basis is unconstitutional

1 **207.** The Madisonian Test is not merely an academic exercise — it is a reliable
2 predictor of constitutional validity. Coordinate actions that fail the test should be
3 recognized as unconstitutional by courts applying the same analytical framework.

4 **Respectfully submitted,**

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