

September 24, 2019

Re: Defend The Constitution. Vote "Yes" On S.J. Res. 54.

Dear Senator:

The American Civil Liberties Union strongly urges you to defend the Constitution by voting "yes" on S.J. Res. 54, the joint resolution introduced by Senators Tom Udall, Susan Collins, and Jeanne Shaheen to terminate the so-called "national emergency" declared by President Donald Trump in Proclamation 9844. The Senate is due to consider this measure in the coming days under the National Emergencies Act of 1976. The ACLU will score this vote.

Congress must not stand by as the President violates the Constitution by subverting the constitutional system of checks and balances. That is why the ACLU applauded when earlier this year both chambers of Congress approved H.J. Res. 46, the first joint resolution to terminate the President's bogus emergency and uphold the Constitution. Congress was clear in the appropriations statute on parameters for spending federal funds at the southern border, and there is no emergency, as members of Congress from both parties, security experts, and Americans who live at the border have all agreed. The President's claim of a non-existent emergency to divert funds violates the appropriations statute for Fiscal Year 2019 and a federal statute on emergency reallocation of military construction funding. The resulting reprogramming of federal funds violates the Constitution, which in Article I provides exclusive authority to Congress to pass legislation authorizing and appropriating federal funds. The President has no unilateral authority to violate the appropriations statute and the military construction statute by reprogramming funds restricted by Congress through these statutes.

On February 19, 2019, the ACLU, two of our state affiliates, and the Sierra Club, on behalf of the Sierra Club and the Southern Border Communities Coalition, filed a lawsuit challenging the President's use of emergency powers to illegally divert funds to build a wall along the southern border. The lawsuit claims the President's declaration violates core constitutional principles and multiple statutes, including:

- The Consolidated Appropriations Act, 2019 (Pub. Law No. 116-6), which the president signed into law on February 15, 2019;
- The Constitution's Presentment Clause (Article I, Section 7, Clause 2), which requires the president to either sign an appropriations bill presented to him by Congress, or return it with his objections;



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- The constitutional principle of separation of powers because it usurps Congress's power over spending and ignores Congress's decision to provide only limited funding for construction of a wall along the U.S.-Mexico border; and
- The National Environmental Policy Act (42 U.S.C. § 4332), which requires agencies to conduct environmental assessments and consider the harm to wildlife before proceeding with construction.

As explained in the complaint,¹ Congress has already spoken: the Consolidated Appropriations Act, 2019 passed by Congress explicitly rejected President Trump's \$5.7 billion demand for a border wall, and forbade construction in certain areas, including carve-outs for wildlife areas. Further, the President violated the Presentment Clause of the Constitution by signing the 2019 Appropriations Act while simultaneously rejecting it by declaring a national emergency to build more of a border wall than Congress permitted, faster than Congress allowed. The President has no constitutional authority to unilaterally modify the appropriations bills passed by Congress. Additionally, in direct violation of the National Environmental Policy Act, the President's proclamation directs the Department of Homeland Security and Department of Defense to undertake border wall construction without necessarily considering the environmental harms.

Congress—not just the courts—must defend the Constitution. You and your colleagues have the same sworn, solemn obligation that the President and all federal judges have to uphold and defend the Constitution. While the ACLU, other organizations, and numerous states have petitioned federal courts to defend the Constitution against the unlawful declaration of a non-existent emergency, S.J. Res. 54 is another opportunity for Congress to assert its own role in defending the Constitution by terminating the unconstitutional declaration of an emergency.

Whether or not a member of Congress supports or opposes this President's border wall, all members of Congress should join in exercising their duty in our system of checks and balances and making clear that the Constitution does not permit any president to illegally circumvent congressional will and violate federal spending statutes. In this instance, Congress could not have been any clearer in directing what can and cannot be done related to construction of a border wall. Congress and the President sustained the longest partial government shutdown in history due to the refusal by Congress to appropriate additional funds to build a border wall. Moreover, the eventual appropriations bill, duly passed by Congress and signed by the President, included express provisions on the amounts and uses for federal funds at the southern border. Congress must make clear that it will not tolerate this unprecedented, dangerous expansion of presidential power and assault on Congress' role under the Constitution.

¹ More information on *Sierra Club v. Trump* is available at: <https://www.aclu.org/cases/sierra-club-v-trump-challenge-trumps-national-emergency-declaration-construct-border-wall>.

The ACLU strongly urges you to defend the Constitution by voting "yes" on S.J. Res. 54. Please do not hesitate to contact Kate Oh at koh@aclu.org or 202-715-0816 if you have any questions. Thank you for your attention to this issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald Newman". The signature is fluid and cursive, with the first name being more prominent.

Ronald Newman
National Political Director