

Statement on the Resolution on the President's Emergency Declaration

Senator Susan M. Collins

March 14, 2019

“Mr. President, later today, the Senate will make a significant decision with implications for our constitutional system of government. We will vote on a resolution to reverse the President's ill-advised national emergency declaration that funds the construction of a border wall using money that Congress has appropriated and the President has signed into law for other purposes, such as military construction. I want to thank Senator Udall, the Senator from New Mexico, for working together with me. We introduced a companion resolution to overturn the President's declaration, and I commend Senator Udall for his leadership.

“By declaring a national emergency, the President's action comes into direct conflict with Congress' authority to determine the appropriation of funds – a power vested in Congress by the framers of our Constitution in Article 1, Section IX. That is why this issue is not about strengthening our border security, a goal that I support and have voted to advance. Rather, Mr. President, it is a solemn occasion involving whether or not this body will stand up for its institutional prerogatives and will support the separation of powers enshrined in our Constitution.

“Throughout our history, the courts have consistently held that, ‘Only Congress is empowered by the Constitution to adopt laws directing moneys to be spent from the U.S. Treasury.’

“For the past 65 years, the courts have determined the boundaries of presidential authority, vis-a-vis Congress, under the doctrine of *Youngstown Steel Sheet and Tubing*, the 1952 Supreme Court case which reversed President Truman's seizure of U.S. steel companies during the Korean War. As Justice Robert Jackson explained in his profoundly influential concurrence in that case, the question of whether a President's actions are constitutionally valid should be determined by examining the source of the President's authority, and in this concurrence, the Justice goes through three scenarios in which he assesses the President's power.

“According to Justice Jackson, when acts taken by the President are against the express or implied will of Congress, the President's power is at its lowest ebb. Mr. President, President Trump's declaration clearly falls in that category.

“Now, the President rests his declaration on the *National Emergencies Act*, and that act fails to define precisely what constitutes an emergency, but there is a commonsense rule that we can apply. It is a five-part test that was used by the Office of Management and Budget under former President George Herbert Walker Bush to determine whether or not requested funding merited an emergency designation under our budget rules. Under that test, a spending request was designated as an emergency *only* if the need for spending met a five-part test. It had to be necessary, sudden, urgent, unforeseen, and not permanent. Now, whether or not one agrees with

President Trump that more should be done to secure our southern border – and I do agree with him on that goal – his decision to fund a border wall through a national emergency declaration would never pass all of this five-part test.

“Another concern that I have with the President's declaration is that it shifts funding away from critical military construction projects. We don't know which ones. We have not been able to get a list, but this could have very real national security implications. And, again, I would note that the Military Construction Appropriations bill incorporated projects recommended by the President and his Department of Defense, was passed by both bodies and signed into law by the President.

“Let me emphasize once again that the question presented by this resolution is not whether you're for a border wall or against a border wall. It is not whether you believe that border security should be strengthened or whether it is sufficient. It is not whether or not we support or oppose President Trump. Rather, the question is a far more fundamental and significant one. The question is this: do we want the executive branch now or in the future to hold the power of the purse – a power that the framers deliberately entrusted to Congress? We must stand up and defend Congress' institutional powers as the framers intended that we would, even when doing so is inconvenient or goes against the outcome that we might prefer. I urge my colleagues to support the resolution of disapproval and our Constitution.

“Thank you, Mr. President.”

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