

February 25, 2019

Re: Defend The Constitution. Vote “Yes” On H.J. Res. 46.

Dear Representative:

The American Civil Liberties Union strongly urges you to defend the Constitution by voting “yes” on H.J. Res. 46, the joint resolution sponsored by Congressman Joaquin Castro and a majority of the House of Representatives. If enacted, H.J. Res. 46 would terminate the so-called “national emergency” declared by President Donald Trump in Proclamation 9844. The House will vote on the amendment tomorrow afternoon. The ACLU will score this vote.



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Congress must not stand by as the President violates the Constitution by subverting the constitutional system of checks and balances. Congress was clear in the appropriations statute on parameters for spending federal funds at the border, and there is no emergency. The President’s claim of a non-existent emergency to divert funds violates both the appropriations statute for Fiscal Year 2019, as well as a federal statute on emergency reallocation of military construction. 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.

Last Tuesday, 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 emergency powers declaration to secure 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, which the president signed into law last week;
- The Constitution’s Presentment Clause, which requires the president to either sign an appropriations bill presented to him by Congress, or return it with his objections;
- 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, which requires agencies to conduct environmental assessments and consider the harm to wildlife before proceeding with construction.

As explained in the complaint, 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. In direct violation of the National Environmental Policy Act, the President's proclamation directs DHS and DOD to undertake border wall construction without necessarily considering the environmental harms.

Congress—not just the courts—must 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, H.J. Res. 46 is an opportunity for Congress to assert its own role in defending the Constitution. You and your colleagues have the same sworn, solemn obligation that the President and every federal judge has to uphold and defend the Constitution. H.J. Res. 46 terminates the unconstitutional declaration of an emergency.

Regardless of whether a member of Congress supported or opposed the administration's requests for funds for a border wall beyond what was appropriated this month, all members of Congress should join in making clear that the Constitution does not permit any president to 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 border. Congress must make clear that there will be no precedent for any president to undermine the Constitution by violating a statute.

The ACLU strongly urges you to defend the Constitution by voting for H.J. Res. 46. Please do not hesitate to contact us at canders@aclu.org or 202-675-2308 if you have any questions. Thank you for your attention to this issue.

Sincerely,



Ronald Newman
National Political Director



Christopher E. Anders
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