

**Statement of The Constitution Project at the Project On Government Oversight  
to the House Judiciary Committee  
Subcommittee on the Constitution, Civil Rights and Civil Liberties  
“Opposition to President Trump’s Unconstitutional Declaration of a National Emergency”  
February 28, 2019**

On February 14, 2019, Congress passed a spending bill to keep the federal government open. On the same day President Trump signed the bill, he announced that he was declaring a national emergency in order to procure funding to build a wall along a portion of the United States border with Mexico.<sup>1</sup> The bill he signed—which was passed 83 to 16 in the Senate and 300 to 128 in the House of Representatives—appropriated only \$1.375 for 55 miles of “physical barriers.”<sup>2</sup>

At the Project On Government Oversight (POGO), we take no position on whether there should be a physical barrier built along our southern border. We do, however, join the many Democrats and Republicans who believe that the President’s emergency declaration is unconstitutional.

Founded in 1981, POGO is a nonpartisan independent watchdog that investigates and exposes waste, corruption, abuse of power, and when the government fails to serve the public or silences those who report wrongdoing; The Constitution Project was founded in 1997 and joined POGO in 2017. We champion reforms to achieve a more effective, ethical, and accountable federal government that safeguards constitutional principles.

**IT IS THE JOB OF CONGRESS, NOT THE PRESIDENT, TO APPROPRIATE TAXPAYER MONEY**

The framers of the Constitution created a government of separate and distinct powers, which is “essential to the preservation of liberty.”<sup>3</sup> The founders were particularly concerned with severing the power to make war and the power of the purse from the executive: not only are these two of the most significant functions of government, but they also represent powers susceptible to grave abuse by a single head of state. In “Federalist 58,” James Madison explained that the power of the purse was the “most complete and effectual weapon with which any constitution can arm the immediate representatives of the people, for obtaining a redress of every

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<sup>1</sup> Executive Office of the President, “Presidential Proclamation on Declaring a National Emergency Concerning the Southern Border of the United States,” February 15, 2019. <https://www.whitehouse.gov/presidential-actions/presidential-proclamation-declaring-national-emergency-concerning-southern-border-united-states/> (Downloaded February 26, 2019)

<sup>2</sup> U.S. Congress, “Consolidated Appropriations Act of 2019,” (H.J.Res.31). <https://www.congress.gov/bill/116th-congress/house-joint-resolution/31/all-actions?overview=closed#tab> (Downloaded February 25, 2019); *see also* Camilo Montoya-Galvez, “Senate passes bill to fund government, avert another shutdown,” *CBS News*, February 14, 2019. <https://www.cbsnews.com/news/senate-passes-bill-to-fund-government-avert-shutdown/> (Downloaded February 25, 2019)

<sup>3</sup> James Madison, “Federalist No. 51,” *The Federalist Papers*, February 8, 1788. [http://avalon.law.yale.edu/18th\\_century/fed51.asp](http://avalon.law.yale.edu/18th_century/fed51.asp) (Downloaded February 24, 2019)

grievance, and for carrying into effect every just and salutary measure.”<sup>4</sup> In short, the closer the proximity of the spending power to the people, the better.

In the following two provisions, the framers gave Congress—“the people’s representative”<sup>5</sup>—the power to raise and spend funds:

“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...”

and

“No money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law.”<sup>6</sup>

The president can no more spend the people’s money without Congress appropriating it than he can levy taxes without Congress’s approval. As Madison wrote in “Federalist 48,” “the legislative department alone has access to the pockets of the people.”<sup>7</sup> And time and again, the Supreme Court has reaffirmed the primacy of Congress in appropriating money from the national treasury.<sup>8</sup>

By declaring a national emergency to circumvent Congress’s spending decision on border security, the President is acting as appropriator and legislator, roles exclusively reserved for the Congress. If the President is unhappy with Congress’s allotment of funding, the Constitution affords him a single remedy: he can veto the spending bill.<sup>9</sup>

## **THE PRESIDENT’S POWER IS AT ITS “LOWEST EBB” WHEN OPPOSING THE WILL OF CONGRESS**

While past presidents viewed certain events as requiring funding so immediately that they merit superseding the Constitution’s clear limit on the executive, these instances are exceedingly rare and are without parallel in the modern age. The last such instance was by President Abraham

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<sup>4</sup> James Madison, “Federalist No. 58,” *The Federalist Papers*. [http://avalon.law.yale.edu/18th\\_century/fed58.asp](http://avalon.law.yale.edu/18th_century/fed58.asp) (Downloaded February 24, 2019)

<sup>5</sup> Louis Fisher, *Congressional Abdication on War & Spending*, College Station, TX: Texas A&M University Press, 2000, p. 7.

<sup>6</sup> U.S. Constitution, art. I, sec. 8, cl. 1, and U.S. Const. art. I, sec. 9, cl. 7, respectively.

<sup>7</sup> James Madison, “Federalist No. 48,” *The Federalist Papers*, February 1, 1788. [http://avalon.law.yale.edu/18th\\_century/fed48.asp](http://avalon.law.yale.edu/18th_century/fed48.asp) (Downloaded February 25, 2019)

<sup>8</sup> See Gary Kepplinger, “Appropriations Clause,” *The Heritage Guide to The Constitution*, The Heritage Foundation. <https://www.heritage.org/constitution/#!/articles/1/essays/67/appropriations-clause> (Downloaded February 25, 2019)

<sup>9</sup> U.S. Const. art. I, sec. 7, cl. 2.

Lincoln, who ordered the expenditure of \$2 million in federal funds in advance of the appropriations from Congress.<sup>10</sup> He did so at the outbreak of the Civil War and with a Congress unable to hastily convene to appropriate necessary funds to support the Union.<sup>11</sup>

In 2019, there is no such exigency. The situation on the southern border simply is not tantamount to an actual invasion or an act of war.<sup>12</sup> Moreover, the Congress *has* convened and it *has* appropriated funding for border security. In light of these events, President Trump cannot override the separation of powers by declaring a national emergency.<sup>13</sup>

President Trump first announced he was considering declaring an emergency to construct a border wall on January 4, 2019.<sup>14</sup> Over the next month, Congress negotiated a bill, drafted with bipartisan input and passed with bipartisan support, to fund the government. While the continuing resolution passed on February 14 contained \$1.38 billion for pedestrian fencing along the border, it contained no provision or funding to build a “wall.”<sup>15</sup> In so doing, Congress expressed its will through the appropriations process, which is as determinative of the intent of the Congress as if it had passed “substantive legislation” on the matter.<sup>16</sup>

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<sup>10</sup> Bob Allen and Sarah Miller, “The Constitutionality of Executive Spending Powers,” Briefing Paper No. 38, Harvard Law School Federal Budget Policy Seminar, May 10, 2008, p. 23. (“That no significant act of unappropriated spending has occurred in the 147 years since the beginning of the Civil War should not be surprising; Presidents are generally quite adept at securing the resources they need without risking the political repercussions of spending tax dollars based on a seemingly undemocratic and constitutionally-suspect theory of an inherent spending power.”) [http://www.law.harvard.edu/faculty/hjackson/ConstitutionalityOfExecutive\\_38.pdf](http://www.law.harvard.edu/faculty/hjackson/ConstitutionalityOfExecutive_38.pdf) (Downloaded February 25, 2019); Kate Stith, “Appropriations Clause,” The National Constitution Center. <https://constitutioncenter.org/interactive-constitution/interpretations/appropriations-clause-article-i-section-9-clause-7> (Downloaded February 25, 2019)

<sup>11</sup> David Barron and Martin Lederman, “The Commander in Chief at the Lowest Ebb—A Constitutional History,” *Harvard Law Review* Vol. 80, No. 4 (February 2008), pp. 996-1004. [https://harvardlawreview.org/wp-content/uploads/pdfs/barron\\_lederman2.pdf](https://harvardlawreview.org/wp-content/uploads/pdfs/barron_lederman2.pdf) (Downloaded February 26, 2019)

<sup>12</sup> In 2017, arrests for illegal border crossings reached their lowest level since 1971. Joe Ward and Anjali Singhvi, “Trump Claims There is a Crisis at the Border. What’s the Reality?,” *New York Times*, January 11, 2019. <https://www.nytimes.com/interactive/2019/01/11/us/politics/trump-border-crisis-reality.html> (Downloaded February 27, 2019).

<sup>13</sup> 10 U.S.C. § 2808. See below for further discussion of this statute.

<sup>14</sup> David Nakamura and Josh Dawsey, “‘I can do it if I want’: Trump threatens to invoke emergency powers to build wall,” *The Washington Post*, January 4, 2019. [https://www.washingtonpost.com/politics/i-can-do-it-if-i-want-trump-threatens-to-invoke-emergency-powers-to-build-border-wall/2019/01/04/992a129c-105b-11e9-8938-5898adc28fa2\\_story.html?utm\\_term=.1e7ed8ea59f9](https://www.washingtonpost.com/politics/i-can-do-it-if-i-want-trump-threatens-to-invoke-emergency-powers-to-build-border-wall/2019/01/04/992a129c-105b-11e9-8938-5898adc28fa2_story.html?utm_term=.1e7ed8ea59f9) (Downloaded February 25, 2019).

<sup>15</sup> Mike DeBonis, “What’s in the 1,169 page border-security bill to avert a government shutdown,” *The Washington Post*, February 14, 2019. [https://www.washingtonpost.com/politics/whats-in-the-1169-page-border-security-bill-to-avert-a-government-shutdown/2019/02/14/fb422a96-3068-11e9-8781-763619f12cb4\\_story.html?utm\\_term=.f49223008ed1](https://www.washingtonpost.com/politics/whats-in-the-1169-page-border-security-bill-to-avert-a-government-shutdown/2019/02/14/fb422a96-3068-11e9-8781-763619f12cb4_story.html?utm_term=.f49223008ed1) (Downloaded February. 25, 2019)

<sup>16</sup> William C. Banks & Peter Raven-Hansen, “Pulling the Purse Strings of the Commander in Chief,” *Virginia Law Review*, Vol. 80 (May 1994), p. 842. <https://advance.lexis.com/api/permalink/2d6eb68e-42ed-4cfe-802b-a4f6266da425/?context=1000516> (Downloaded February 26, 2019) (“Any legislative consideration that the Constitution requires has presumptively been given every bill that becomes law, so the mechanics of the appropriation process afford no basis for diminishing the force and effect of appropriations as law.”)

President Trump’s declaration of a national emergency therefore directly contravenes the will of Congress. As Supreme Court Justice Robert Jackson noted in his often-cited concurrence to the 1952 landmark ruling in *Youngstown Sheet & Tube Co. v. Sawyer*, when a president seeks to contravene the will of Congress, his “power is at its lowest ebb.”<sup>17</sup> Justice Jackson continued, a “[p]residential claim to a power [under those circumstances]... must be scrutinized with caution, for what is at stake is the equilibrium established by our constitutional system.”<sup>18</sup> Unlike this declaration, none of the nearly 60 previous emergency declarations since the passage of the National Emergencies Act of 1976<sup>19</sup> have directly contradicted the will of Congress, and so posed no threat to the equilibrium on which our constitutional system depends.<sup>20</sup> Thus, it is not surprising that, as Senate Majority Leader Mitch McConnell (R-KY) recently noted, emergency declarations “issued in the past have not been contentious.”<sup>21</sup>

If Congress allows President Trump’s declaration of an emergency—issued the day after Congress rejected his bid for wall funding—to stand, this would set a dangerous precedent for future presidents to create a constitutional workaround to force their will in policy conflicts. As numerous former Republican Members of Congress have noted, in addition to jeopardizing the separation of powers, if Congress allows this president to contravene its will, it would set a precedent that could later be used for purposes that would surely cause Republicans in office now to regret ceding the power of the purse to the whims of the executive.<sup>22</sup> What would stop a Democrat in the White House from declaring something like climate change a national emergency and subsequently suspending duly enacted laws to address the crisis?<sup>23</sup>

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<sup>17</sup> *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 637-38 (1952), discussing the three categories of presidential power, relative to Congressional power: Category I, in which the president’s power is at its peak when he is acting pursuant to an express authorization by Congress; Category II, in which the president is acting in absence of a Congressional grant or denial of authority and thus constitutes a “zone of twilight in which the president and the Congress may have concurrent authority”; and Category III, in which the president is acting contrary to the express or implied will of Congress, putting the president’s power “at its lowest ebb.” Bob Allen and Sarah Miller, “The Constitutionality of Executive Spending Powers,” Briefing Paper No. 38, Harvard Law School Federal Budget Policy Seminar, May 10, 2008, p. 3.

<sup>18</sup> *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. at 638.

<sup>19</sup> See below for further discussion of the National Emergencies Act of 1976.

<sup>20</sup> Catherine Padhi, “Emergencies Without End: A Primer on Federal States of Emergency,” *Lawfare*, December 8, 2018. <https://www.lawfareblog.com/emergencies-without-end-primer-federal-states-emergency> (Downloaded February 27, 2019) (noting that Congress has not voted to end any of the national emergencies previously declared under the Act).

<sup>21</sup> Nancy Cordes, “Dozens of federal workers will join Democrats at State of the Union,” *CBS News*, February 5, 2019. <https://www.cbsnews.com/news/dozens-of-federal-workers-will-join-democrats-at-state-of-the-union-2019-02-05/> (Downloaded February 25, 2019)

<sup>22</sup> “26 Former GOP Lawmakers: Honor Your Oath and Protect the Constitution,” Project On Government Oversight, February 25, 2019. <https://www.pogo.org/letter/2019/02/former-gop-lawmakers-honor-your-oath-and-protect-the-constitution/>

<sup>23</sup> See Senator Thom Tillis, “I support Trump’s vision on border security. But I would vote against the emergency.” *The Washington Post*, February 25, 2019. [https://www.washingtonpost.com/opinions/2019/02/25/i-support-trumps-vision-border-security-i-would-vote-against-emergency/?utm\\_term=.aed030566c1a](https://www.washingtonpost.com/opinions/2019/02/25/i-support-trumps-vision-border-security-i-would-vote-against-emergency/?utm_term=.aed030566c1a) (Downloaded February 26, 2019)

If a president no longer has to come to Congress to withdraw funds from the national treasury, there are endless purposes for which taxpayer money may be spent at the whim of a single individual. This kind of conduct defines an autocracy, not a democracy.

## **EMERGENCIES DO NOT SUSPEND THE SEPARATION OF POWERS**

In objecting to President Trump's emergency declaration, we are not suggesting that there is never a circumstance under which this president, or any other, could properly declare an emergency.

Since the passage of the National Emergencies Act, there had been 59 previous national-emergency declarations, not including the most recent.<sup>24</sup> These declarations, as Senator McConnell noted, have not been contentious; they have addressed issues such as the Iran hostage crisis of 1979 and the swine flu outbreak in 2009.<sup>25</sup> In fact, President Trump has previously declared three national emergencies, and 28 emergencies declared by past administrations, most of which provide for the imposition of sanctions on foreign entities, are still in effect.<sup>26</sup>

Upon a president's declaration of a national emergency, there are over 100 statutory provisions that allow him to exercise emergency powers.<sup>27</sup> Some of these statutes list conditions that must be met in order for the president to exercise the authorities contained within them—for example, a potential bioterrorism attack<sup>28</sup>—while others do not. The statutes that lack clearly defined conditions are ripe for abuse of power by the executive. The National Emergencies Act, which was enacted to “make the executive branch more responsible to Congress when using statutory

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<sup>24</sup> Brennan Center for Justice, “Declared National Emergencies Under the National Emergencies Act 1978-2018.” <https://www.brennancenter.org/sites/default/files/analysis/NEA%20Declarations.pdf> (Downloaded February 25, 2019)

<sup>25</sup> Executive Order 12170, 44 Fed. Reg. 65729 (November 14, 1979) and Executive Proclamation 8443, 74 Fed. Reg. 55439 (October 23, 2009), respectively.

<sup>26</sup> President Trump's prior declarations were Executive Orders 13818, 82 Fed. Reg. 60839 (December 20, 2017); 13848, 83 Fed. Reg. 46843 (September 12, 2018); 13851, 83 Fed. Reg. 61505 (November 27, 2018). Brennan Center for Justice, “Declared National Emergencies Under the National Emergencies Act 1978-2018.” <https://www.brennancenter.org/sites/default/files/analysis/NEA%20Declarations.pdf> (Downloaded February 25, 2019)

<sup>27</sup> Brennan Center for Justice, “A Guide to Emergency Powers and Their Use,” December 5, 2018 (Updated January 23, 2019). <https://www.brennancenter.org/analysis/emergency-powers> (Downloaded February 25, 2019)

<sup>28</sup> *See, for example*, 21 U.S.C. § 360bbb-3, which permit the FDA to allow unapproved uses of medical products in an emergency as defined in the statute and after said emergency is declared by the Secretary of Health and Human Services. For example, part of the statute's defining language specifies that “The Secretary may make a declaration that the circumstances exist justifying the authorization under this subsection for a product on the basis of (A) a determination by the Secretary of Homeland Security that there is a domestic emergency, or a significant potential for a domestic emergency, involving a heightened risk of attack with a biological, chemical, radiological, or nuclear agent or agents...”

emergency authority,” requires the president to identify the emergency powers laws he is invoking upon declaring an emergency.<sup>29</sup>

When President Trump declared a national emergency on February 15, he invoked a 1982 emergency powers law that does not list the sort of conditions described above. This law allows the president, “in the event of a declaration of war or the declaration by the President of a national emergency...that requires use of the armed forces,” to exercise the emergency powers contained in the statute.<sup>30</sup> This is problematic because the president alone can create the conditions that trigger the authorization of those powers, as he has the authority to act unilaterally to declare a national emergency and to determine when a situation requires the use of the armed forces. Even so, while this law grants the president far too much discretion, it does not authorize the President to overstep the separation of powers by contravening the will of Congress.

In short, emergencies do not suspend the separation of powers. Indeed, it is during emergencies when constitutional protections from executive overreach may be most needed.

Our nation’s founders knew well the dangers of entrusting a single executive with unfettered power. And, as Constitution Project at POGO Scholar in Residence Louis Fisher, a well-known expert on executive power, has observed,

It could be argued (and has been argued) that the framers’ model was appropriate for the eighteenth century but not for contemporary times, when it is supposedly important to concentrate greater power in the president to respond promptly to national emergencies. The framers were fully aware of such arguments and rejected them. Living in a time of crisis and situated on the highly vulnerable eastern seaboard, they decided to vest in Congress the core powers of war and spending.<sup>31</sup>

The Constitution plainly gives Congress the power to spend, but the separation of this power from the executive has little meaning—and does little to protect the pockets of the people—if Congress abdicates the role to the president.

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<sup>29</sup> George G. Slater, “The National Emergencies Act of 1976- End of Emergency Government?” *IUSTITIA*: Vol. 4, No. 2, (April 15, 1977), p. 6.

<https://www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=1079&context=iustitia> (Downloaded February 25, 2019); 50 U.S.C. § 1631 (“When the President declares a national emergency, no powers or authorities made available by statute for use in the event of an emergency shall be exercised unless and until the President specifies the provisions of law under which he proposes that he, or other officers will act.”).

<sup>30</sup> 10 U.S.C. § 2808(a)

<sup>31</sup> Louis Fisher, *Congressional Abdication on War & Spending*, College Station, TX: Texas A&M University Press, 2000, p. 162.

Recent history provides an example of Congress attempting to hand over this authority to the president, with the 1996 Line Item Veto Act, which allowed the president to cancel various spending measures contained within a bill passed by Congress unless the Congress voted within 30 days to reverse the cancellation.<sup>32</sup> The Supreme Court soon proved more willing than Members of Congress themselves to protect Congress's institutional prerogatives and responsibilities, finding the Act unconstitutional.<sup>33</sup>

In passing a law to permit the president to issue line item vetoes, Congress gave away its power. Now, Congress appears to be on the brink of handing over that power to the president again, allowing the president act as appropriator. It could be that, should litigation on the national emergency reach the Supreme Court, the Court would view this issue similarly and reject the President's attempt to usurp Congress's spending power. But the preferable path is for Congress to defend its own constitutional and institutional prerogatives and expressly reject the President's creation of a "national emergency" workaround of the Constitution.

### **HISTORY REPEATS ITSELF**

Rather than resembling previous national emergency declarations, President Trump's declaration is akin to past, ill-fated attempts by presidents to invoke a crisis to justify overstepping the separation of powers. Congress would be wise to see this ploy for what it is.

President Lincoln suspended habeas corpus while Congress was not in session and later suggested that his own action had been illegal.<sup>34</sup> Facing a nationwide strike of steelworkers, President Harry S. Truman attempted to federalize steel mills around the country, which the Supreme Court forcefully repudiated as an unconstitutional power grab, in the *Youngstown Steel* case discussed above.

The Constitution Project at the Project On Government Oversight would have opposed those illegal actions, just as we have opposed their modern iterations. These include our opposition to

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<sup>32</sup> U.S. Congress, "Line Item Veto Act of 1996," (Public Law 104-130), April 9, 1996. <https://www.govinfo.gov/content/pkg/PLAW-104publ130/pdf/PLAW-104publ130.pdf> (Downloaded February 27, 2019)

<sup>33</sup> *City of New York v. Clinton*, 524 U.S. 417 (1998)

<sup>34</sup> Abraham Lincoln, "Special Session Message (July 4, 1861)," in James D. Richardson, ed., *A Compilation of the Messages and Papers of the Presidents*, Vol. 6, 1902. <http://www.gutenberg.org/files/12462/12462-h/12462-h.htm>[https://harvardlawreview.org/wp-content/uploads/pdfs/barron\\_lederman2.pdf](https://harvardlawreview.org/wp-content/uploads/pdfs/barron_lederman2.pdf) (Downloaded February 27, 2019)

President Barack Obama’s unconstitutional use of force in Iraq in 2014<sup>35</sup> and in Libya in 2011,<sup>36</sup> as well as our pointed criticism of senior-level officials under President George W. Bush for violating treaty obligations through forced disappearances and arbitrary detention of terror suspects in secret prisons around the world after 9/11.<sup>37</sup>

If even acts of war and terrorism do not warrant breaking the law, then a funding dispute over border security clearly does not. The fact of the matter remains that when it comes to spending the people’s money, *it is the president who is subordinate to Congress, not the other way around.*

We must vigorously oppose abuse of power, regardless of who is in the White House, and we call on all Members of Congress to do the same.

**Accordingly, we strongly urge Congress to pass a resolution to end the national emergency.**

Furthermore, this episode illuminates long-simmering problems with the current legal framework for addressing real emergencies. Most notably, the National Emergencies Act does not define what constitutes a national emergency. This was a purposeful omission, as legislators intended to rely on the definitions to be found in “the various statutes which give [the president] extraordinary powers.”<sup>38</sup> Such reliance was misguided, as plainly demonstrated by President Trump’s invocation of a 1982 law that provides no meaningful limit on what conditions permit reallocation of funds appropriated for military construction.

We also urge Congress to consider reforms to the National Emergencies Act to better ensure that presidents are both well-equipped to respond to actual emergencies and precluded from abusing that authority. These amendments could include a sunset provision that would, absent Congressional action within a specified time period, end the national emergency; providing some basic definition and justiciable standards as to what constitutes an emergency; as well as

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<sup>35</sup> Letter from Members of The Constitution Project’s War Powers Committee to President Barack Obama, calling on him to recall Congress to authorize military intervention in Iraq, Aug. 20, 2014. [http://constitutionproject.org/wp-content/uploads/2014/08/8-20-Iraq-WP-Letter-President-Obama.pdf?utm\\_source=PR%3A+Ltr+to+Obama+on+Iraq&utm\\_campaign=Release+-+Obama+ltr+on+Iraq+Aug20&utm\\_medium=email](http://constitutionproject.org/wp-content/uploads/2014/08/8-20-Iraq-WP-Letter-President-Obama.pdf?utm_source=PR%3A+Ltr+to+Obama+on+Iraq&utm_campaign=Release+-+Obama+ltr+on+Iraq+Aug20&utm_medium=email) (Downloaded February 25, 2019).

<sup>36</sup> Louis Fisher, The Constitution Project, “Libya and War Powers,” before the Senate Committee on Foreign Relations, June 28, 2011. [http://constitutionproject.org/pdf/62811\\_loufisher\\_testimonysenforrelationscommittee\\_libyawarpowers.pdf](http://constitutionproject.org/pdf/62811_loufisher_testimonysenforrelationscommittee_libyawarpowers.pdf) (Downloaded February 25, 2019)

<sup>37</sup> Report of The Constitution Project’s Task Force on Detainee Treatment, Washington, DC, April 16, 2013, pp.16-17. <https://detaineeetaskforce.org/pdf/Findings-and-Recommendations.pdf> (Downloaded February 25, 2019).

<sup>38</sup> Senate Committee on Government Operations, 94<sup>th</sup> Congress, 2nd Session, *National Emergencies Act Source Book*, April 15, 1977, p. 1, cited in George G. Slater, “The National Emergencies Act of 1976- End of Emergency Government?,” *IUSTITIA*: Vol. 4, No. 2, (April 15, 1977), p. 6.



ensuring that the Act cannot be used for expenditures that Congress has rejected through its authorization or appropriations process.

Finally, Congress must begin the difficult task of examining emergency provisions found across dozens of federal statutes, with an eye toward amending those that are ripe for abuse. While some of these laws may provide sufficient definition and reasonable restrictions on executive powers, others, like the 1982 law the President invoked, do not.

It is of the utmost importance that Congress act now to reassert its constitutional authority as the nation's lawmaker and appropriator by ending this national emergency, lest it allow the executive branch to do lasting damage to our constitutional system.