



Legislation Text

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Res. No. 847

Resolution calling upon the United States Congress to amend the National Emergencies Act of 1976 to properly regulate the scope of presidential power during a national emergency and to curtail executive overreach.

By Council Members Miller, Ayala, Rivera, King, Barron, Kallos and Rosenthal

Whereas, The federal National Emergencies Act (NEA), adopted by Congress in 1976, authorizes the President to declare national emergencies and establishes procedural requirements for the President's exercise of such emergency powers; and

Whereas, On February 15, 2019, President Donald J. Trump declared a national emergency pursuant to the NEA concerning the southern border of the United States and the alleged national security and humanitarian crisis caused by a supposed influx of migrants; and

Whereas, On February 26, 2019, the House of Representatives passed a resolution of disapproval overturning the emergency declaration on the grounds that it violated Congress' constitutional power to allocate federal funds; and

Whereas, on March 14, 2019, the Senate, despite having a Republican majority aligned with President Trump, joined the House in passing the resolution of disapproval; and

Whereas, Despite the President's proclamations, the national emergency declaration is not supported by credible evidence, where the United States Customs and Border Protection data shows apprehensions at the southwest border are near historic lows; and

Whereas, Federal government data also indicates that a vast majority of drugs smuggled into the country enter the United States through, not between, ports of entry; and

Whereas, According to a 2017 State Department Counterterrorism Bureau report, there is no credible

evidence that terrorists are using the southern border as a means of entering the country; and

Whereas, The national emergency was declared after the Trump administration failed to secure funding for a proposed border wall through the traditional legislative process; and

Whereas, President Trump's national emergency declaration therefore demonstrates the legitimate concern of executive overreach permitted under the existing NEA statutory scheme; and

Whereas, In conjunction with the emergency declaration, the Trump Administration released a statement announcing that the President was taking executive actions to divert up to \$8.1 billion dollars to build a border wall, including reallocating up to \$3.6 billion from United States Department of Defense military construction projects; and

Whereas, On February 18, 2019, sixteen states, including New York, concerned about the proposed diversion of federal funds and the lawfulness of the emergency declaration, filed a lawsuit against the Trump administration challenging the national emergency declaration as violating the separation of powers principles enshrined in the United States Constitution; and

Whereas, According to a guide prepared by the Brennan Center for Justice, the declaration of a national emergency provides the President access to 123 statutory provisions governing a vast array of subject areas including military, land use, public health, trade, agriculture, transportation, communications, and criminal law; and

Whereas, The powers afforded under these statutory provisions significantly expand the powers of the executive and generally permit the President to act in ways that would be illegal in non-emergency contexts; and

Whereas, The expansive powers afforded under the NEA are vulnerable to exploitation, as evidenced by the unsubstantiated claims asserted in defense of the emergency declaration; and

Whereas, The NEA in its present form remains vulnerable to such abuse as it does not require that the powers invoked by the executive relate to the emergency declared, nor does it even define the term

“emergency”; and

Whereas, In order to protect against further misuse and maintain the constitutional balance of powers between the Legislative and Executive branches of government; now, therefore, be it

Resolved, That the Council of the City of New York calls upon the United States Congress to amend the National Emergencies Act of 1976 to properly regulate the scope of presidential power during a national emergency and to curtail executive overreach.

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