

The Brookings Institution
5 on 45
Can Congress stop Trump's national emergency declaration?
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(MUSIC)

PITA: You're listening to 5on 45 from the Brookings Podcast Network, analysis and commentary from Brookings experts on today's news regarding the Trump administration.

REYNOLDS: My name is Molly Reynolds and I'm a senior fellow in the Governance Studies Program at the Brookings Institution. By a vote of 245 to 182 the House of Representatives registered its disapproval of President Trump's national emergency declaration meant to facilitate the construction of a barrier on the southwestern border. Democrats provided the vast majority of votes in favor with all 232 members present voting in favor of the disapproval resolution. They were joined by 13 Republicans who represented the relatively broad swath of the conference. Some like Michigan's Justin Amash and Kentucky's Thomas Massie are Libertarian minded. The House Liberty Caucus chaired by Amash released a statement arguing that the declaration quote does not conform to our constitution. Others like Pennsylvania's Brian Fitzpatrick, Michigan's Fred Upton, Texas's Will Hurd, and Washington's Jamie Herrera Butler and Cathy McMorris Rodgers won their districts with less than 55 percent of the vote last fall, as a result they may have electoral reasons for pushing back against Trump's declaration. Some reports have indicated that there might be notably more Republicans defecting to support the measure than ultimately did suggesting that House Republican leaders were successful at pressuring some wavering members to stay on the president's team on the vote.

The particular process Congress is using to review Trump's emergency declaration dates to the mid-1970s when it was created as part of a broader set of new congressional procedures meant to enhance Congress's power to check the behavior of the executive branch. The basic approach is this Congress identified specific actions that the president could take like declaring a national emergency and subjected them to congressional review using special procedures that speed up the often-slow moving gears of the legislative process. The original version of the procedures allowed the House and Senate

to end a national emergency declared by the president using a concurrent resolution which does not require the president's signature to take effect. But thanks to 1983 Supreme Court decision resolutions disapproving of a presidential declaration of emergency must now be joint resolutions which do go to the White House. Her presidential signature or veto. The president has already threatened to veto the resolution which would be the first veto of his presidency given that the House version did not clear the two thirds threshold necessary for a veto override. It's unlikely that the measure ultimately halts the national emergency. Whether the resolution actually makes it to President Trumps desk however depends on what happens to it in the Senate. The particular procedures being used to consider the resolution make it difficult for Senate Majority Leader Mitch McConnell to prevent a vote maneuver he is generally able to execute with other bills he opposes. In addition, because debate on the disapproval resolution is limited proponents of the disapproval measure will not need to muster 60 votes to end a potential filibuster. Without that particular hurdle supporters of ending the emergency only to garner 51 votes to adopt the resolution, assuming all 47 Democrats support the measure four Republicans will need to join them. Three Republican Senators Lisa Murkowski of Alaska, Susan Collins of Maine, and Thom Tillis of North Carolina have already announced that they plan to do so, and several others have yet to commit to a position.

Even if this disapproval resolution fails conflict over Trumps national emergency is far from over litigation including a lawsuit brought by 16 state attorneys general is already underway. Reporting suggests that some of the internal reallocation of funds President Trump has proposed may require additional rational sign off. And as Congress heads into next year's appropriations season reading spending bills for the fiscal year that begins on October. Legislators will have another opportunity to debate levels and limitations on the president's ability to spend money for a barrier along the southern border. In the end, the biggest lesson of the National Emergency votes in Congress are likely to remind us of

several important dynamics in the contemporary political system. While we saw some House Republicans defect from the party line and we'll see some Senate Republicans do so as well. Members of Congress are largely willing to stick with the president of their party, even if it means casting a vote that strays from previously articulated principles about executive overreach. While the president is unpopular overall his approval ratings among Republicans remain in the high 80s, and Republican members of Congress are sensitive to those political realities. At the same time the mere existence of the vote in the House is a reminder that elections have consequences. Had Democrats not taken the majority in the 2018 midterms, Republicans would have likely tried to find a way to prevent a disapproval resolution from coming to the floor for a vote at all. So, this week's vote may not ultimately halt the national emergency, but it does foreshadow likely trends for the next two years.

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