

in our automobiles. Maryland is one of 12 States under section 177 that follow California's tougher standards. That is now being jeopardized by the Trump administration.

As we are considering the leadership of the Environmental Protection Agency, we have to recognize that the Trump administration has moved us in the wrong direction. We take pride that with every administration, Congress adds to the protections we have for clean air and clean water and dealing with our environment. Yet we find with this President, the opposite is true. That puts special responsibility on us in Congress. We have to fill that vacuum. Yet the Republican leadership in Congress has made no effort to bring forward legislation to deal with climate change. They have not acknowledged that climate change is real. They have not acknowledged that our activities here are the primary cause of climate change. They have not acknowledged that science tells us that if we do the right thing, we can affect for the better the impact of climate change in our communities. All that has been denied by this administration.

What we should do is bring forward comprehensive legislation to reduce greenhouse gases. We should put a true cost on carbon. Let the market forces help solve the problems we have here. We should provide for the continued efficiency of the transportation sector. We should restore America's leadership. That is what this Congress should be considering. Yet under Republican leadership, we have had no opportunity to consider comprehensive legislation in this area.

If we acted, it would be good for our environment. There is no question about that. Why should we all be concerned about that? Let me give some examples from my State of Maryland. Over the last 50 years, Maryland has experienced a 70-percent increase in rainfall. Tell the people of Ellicott City, who have experienced two 1,000-year floods in the last 20-month period. These are floods that they have never seen before in their lifetime. A large amount of rain that fell in a very short period of time caused tremendous damage to the people of Ellicott City. Tell the 13 million people who are in danger of being displaced by the end of this century because of rising sea levels. Tell the people in the Western United States whose homes were taken by wildfires. We need to act. It would be good for our environment.

I am proud to be one of the Senators who represent the Chesapeake Bay Watershed. There are 18 million people who live in the Chesapeake Bay Watershed. We see a rise in the sea level. This is a vulnerable body of water.

The warming of the Chesapeake Bay is causing the loss of seagrasses that are important for the aquatic life. The salinity of the bay is being diminished because of more freshwater, and that is affecting the ecology of the bay. Algae growths are greater and longer because

of the warm waters. All of that affects the Chesapeake Bay. If we respond to climate change, we have a much better chance of improving the quality of the Chesapeake Bay, which is critically important for the way of life for the people who live in the Chesapeake Bay Watershed.

It is also, by the way, an important economic issue. If we do what is right and respond to climate change, we will also be helping our economy. The Chesapeake Bay alone adds \$1 trillion to our economy. A clean bay helps our economy. Green energy creates jobs—many more jobs than do traditional fossil fuels.

It also is good for our national security. If we use more of the renewables and fewer fossil, we as a nation will be stronger from the point of view of not being dependent on other countries that don't agree with our way of life for supplying energy needs not only to us but to our allies around the world—to the democratic countries around the world. It makes sense.

As we are considering the future leadership of the Environmental Protection Agency, let us recommit ourselves to recognizing that we have responsibilities to advance these environmental issues and implore upon the Republican leadership to bring forward comprehensive legislation that, in fact, will make a significant difference on the trajectory of climate change here in the United States and will restore America's global leadership on this critically important issue.

I yield the floor.

The PRESIDING OFFICER (Mr. CRAMER). The Senator from Maryland.

Mr. VAN HOLLEN. Mr. President, I start by associating myself with the remarks of my friend, the senior Senator from the State of Maryland, Mr. CARDIN, both with respect to the vital importance of moving forward on climate change legislation here in the Senate and with respect to my opposition to the nomination of Mr. Wheeler. I think we need somebody at the head of the EPA who is going to make the issue of climate change and other vital environmental issues a priority.

#### DECLARATION OF NATIONAL EMERGENCY

Mr. President, I come to the floor with respect to another critical issue facing this Senate right now. I would just start by noting the fact that earlier this week, in this very Chamber, the senior Senator from Nebraska, Mrs. DEB FISCHER, gave the annual reading of George Washington's Farewell Address, reminding all of us of the advice that our first President gave our country upon his resignation. He encouraged us to review the words of his farewell address frequently as the "disinterested warnings of a parting friend, who can possibly have no personal motive to bias his counsel." Those were the words of George Washington in his farewell address as he gave us all some warnings and admonitions.

Maryland is particularly proud of the fact that President Washington re-

signed his military commission in Annapolis, in our Old Senate Chamber. Every year, in the Maryland Senate, where I once served, we honor President Washington for Presidents Day. One year, I had the honor of giving the commemorative address on that occasion, and I appreciate the fact that the U.S. Senate recognizes the extraordinary farewell address delivered by our first President. His words of warning have been prescient throughout history, from his caution against internal divisions, including geographic divisions between the North and the South, to the necessity of avoiding foreign entanglements that would imperil our own unity.

At this particular moment in time, as we reflect on President Washington's Farewell Address, we have to do it in the context of the current President's extraordinary, unnecessary, and, I believe, totally unlawful declaration of emergency powers for the sole purpose of diverting taxpayer money, which has been previously appropriated by this Congress, to a different purpose, especially to build a wall along our southern border. In that context, we really need to reflect on the words of our first President and remember that our Constitution entrusts us, through article I, as a coequal branch of government, to do our duty under the Constitution.

We know the history. We know that after winning our independence from England, President Washington, along with many of our other Founders, was concerned with the possibility of authoritarianism and of the critical need to build checks and balances into our political system. Here is the key warning in the farewell address on this score: "The habits of thinking in a free country should inspire caution in those entrusted with its administration to confine themselves within their respective constitutional spheres, avoiding in the exercise of the powers of one department to encroach upon another."

President Washington argued that this encroachment of one branch of government on the constitutional powers of another is a natural impulse and one that we must guard against as a self-governing people because of the "love of power and proneness to abuse it," and that is why checks and balances are necessary to prevent it.

He went on to write:

The necessity of reciprocal checks in the exercise of political power, by dividing and distributing it into different depositaries and constituting each the guardian of the public weal against invasions by the others, has been evinced by experiments ancient and modern, some of them in our country and under our own eyes. To preserve them must be as necessary as to institute them.

Now let's review what just happened here in our political system in the last couple of weeks. Just a few weeks ago, President Trump, after failing to achieve his desired outcome through the legislative process, through congressional action, decided that he would bypass the Congress by declaring

a national emergency in order to redirect funding to build the wall. This is a textbook example of the kind of power grab by an executive branch that George Washington warned us about in his farewell address.

President Trump is claiming he has this authority pursuant to the National Emergencies Act of 1976, but a review of the legislative history of the National Emergencies Act demonstrates that it was passed not to expand Presidential power but to curb it. Three years earlier, Congress's Special Committee on the Termination of the National Emergency was created to end outdated emergency declarations and, according to the committee's report at the time, "recommend ways in which the United States can meet future emergency situations with speed and effectiveness but without relinquishment of congressional oversight and control." That was what the special committee's report concluded, and that formed the basis of the legislation that followed.

The National Emergencies Act gives the President very, very narrow and conditioned-based authority to declare an emergency and specify the steps necessary to confront it, and it gives Congress the authority, as we saw in the House just yesterday, to pass legislation to disapprove of and to terminate the emergency. Of course, it will also be subject to court review. I would suggest that it is not our job to pass laws which we know to be unconstitutional and simply leave it to the courts to reach the obvious conclusions. We have a responsibility here in this Chamber, not only under the Constitution but under the very statute the President proposes to use now for his declaration, to apply our authority and responsibility as a coequal branch of government.

Now let's review the context of this decision. The President's interest in spending billions of dollars of taxpayer money for a wall along the southern border was not a secret to Congress. Of course, during the campaign—as a matter of his campaign pledges and as he continues to insist—he did say that at the end of the day, Mexico will pay for it. Yet, for the purposes of today, that is not the main point. The point is that the President had told this Congress that it was his intention to try to spend billions of dollars to build a wall.

His original budget request to the Congress for the fiscal year that we are in was \$1.6 billion. That was the budget request we got from the Senate Appropriations Committee. Then, last fall and last winter, in December, the President began demanding much higher amounts for the wall he wants to build. In fact, in his meeting with then-Democratic Leader NANCY PELOSI and Democratic Leader SCHUMER on December 11, here is what the President said: If we don't get what we want, one way or the other, through you or the military or anybody else, yes, I will shut down the government.

That was in December. What the President was saying was that if he doesn't get his appropriations—the budget request—through the Congress, he was going to shut down the government. He did, and he did that for 35 days. That was his constitutional prerogative not to sign a bill. It, obviously, caused great harm and dislocation around the country. It caused a lot of economic pain and a lot of personal financial pain to millions of Americans, but the President clearly had the authority to do that.

As the Congress, we were aware of the President's position. He made it very clear. Then, after the government shutdown was over, of course, we passed that short-term piece of legislation to keep the government open for 3 weeks as we worked on a longer term budget plan.

Around February 14 of this year, we passed a compromise budget bill—a compromise appropriations bill. That bill provided \$1.375 billion for 55 miles of pedestrian and levee fencing along the U.S. border with Mexico. That bill passed the U.S. Senate by a vote of 83 to 16, and it passed the House of Representatives by a vote of 300 to 128. As with most bills that pass the Congress with those kinds of bipartisan majorities that are compromises, it didn't have everything everyone wanted. It had some things in it that one side or the other may not have wanted, but it was a compromise, and it was made necessary to pass a bill to keep the government open. It was to make sure our constituents received the services of their government and to make sure that we met the needs of the country.

On the very morning that we considered that bill here in the Senate Chamber, President Trump was considering his next steps. In fact, Majority Leader MCCONNELL announced on the floor here that President Trump had told him that he was going to sign the bill but that he was also going to sign an emergency declaration to override the appropriations in the bill and divert those moneys to some other purpose that Congress had not authorized. In fact, while Senator MCCONNELL was making that statement at the time we were considering and voting on the bill, it was not a surprise that the President had been considering it. He had been talking for weeks and threatening the Congress that if he didn't get the appropriations levels he wanted for the wall—if he didn't get the budget allocation he wanted—he was just going to declare a national emergency and do it himself. That was his threat.

Clearly, he hoped that threat would force Congress to provide the extra moneys the President requested for the wall, but the Congress didn't do the President's bidding. We passed that compromise bill by those large bipartisan majorities. So what did the President do? Of course, he declared this emergency.

I should note that even as he announced his emergency declaration in

the Rose Garden, the President said: "I could do the wall over a longer period of time. I didn't need to do this . . . but I'd rather do it much faster." That is what the President said at the time. He said he didn't need to do this, not in that way, but he wanted to do this quickly.

Here is the thing. He didn't need to do it. He made it very clear that he decided to do it simply because he didn't get what he wanted from the U.S. Congress; that because we didn't do what the President—what the Executive asked, heck, he was going to declare some emergency to divert money from areas the Congress had approved on a bipartisan basis to some other area the President wanted to spend money on, in this case the wall.

Now, look, the Constitution is pretty clear. The President had the power to veto that bill. He, of course, had refused to go along with an earlier proposal, and that led to a 3-week government shutdown. The President could have done that again. That would have been in his power to do it, and of course the choice for the Congress at that point would have been whether to override the President's veto.

If you look at the size of the votes that appropriations bill passed by—83 to 16 in the U.S. Senate and 300 to 128 in the House—he could have overridden the veto. That would have been the constitutional way for the President of the United States to try to get his way, but that is not what he did. He decided to do something different, declare an emergency in an unconstitutional way.

The question we have to ask ourselves—and I am talking Republicans and Democrats, and I am talking about the Senate as an institution, the House of Representatives as an institution—is should this President or any other President—or any other President—be able to override an appropriations law to the tune of billions of dollars right after Congress has already expressed its position in a bill that we passed by overwhelming majorities or by any majority, a bill that passed.

In declaring this alleged emergency, the President has announced his intention to divert \$2.6 billion from the Department of Defense counterdrug activities. This is an ironic diversion, considering the President's stated concern, which I share, about drug trafficking.

The Defense Department has indicated that those moneys the President is proposing to take from drug trafficking are being spent for that purpose and that only about \$85 million remains in that account. So that means they are going to have to take other moneys from other Defense Department priorities, and the President has indicated they want to take \$3.6 billion from military construction accounts—moneys that this Congress, on a bipartisan basis, has already appropriated for those military construction projects.

Article I is crystal clear. Article I of the Constitution vests this Congress—

this Senate and the House of Representatives—with the power of the purse.

I have my handy, small Constitution right here, and I would just again like to remind our colleagues that it says: “No money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law, and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.”

So article I of the Constitution is very clear. It is the U.S. Congress that has the power of the purse and has the authority to direct taxpayer moneys to the priorities that we decide.

I ask my colleagues whether they are prepared to relinquish that authority. In fact, I would make the point it is really not ours to relinquish because the Constitution is quite clear on this point.

We all know that yesterday the House of Representatives took a vote to say the President is not able to use the particular law he used the other day to declare an emergency. This Senate is going to be voting on that soon, and we have to ask ourselves as Senators what kind of precedent we want to set.

Do we want to adhere to our duties under the Constitution? Should any President be able to say, “Oh, my goodness. I don’t like what the Congress just did. I don’t like the fact that the Congress, through their duly elected Representatives and duly elected Senators, didn’t give me all the money I wanted for the wall, and so I am going to throw the Constitution out, and I am going to take money that the Congress proposed for one purpose, and I am just going to move it somewhere else?”

I want my colleagues to think really carefully about the precedent we would be establishing if we allow that action to go unchecked.

We were just having a conversation here on the floor, my colleague from the State of Maryland and others, about the dangers and risks of climate change. That is a real crisis. I believe we should be investing a lot more funds in building out our clean energy infrastructure.

We may well have a future President, maybe sooner rather than later, who wants to do that. I just ask my colleagues whether they think that President should be able to declare a national emergency and spend money for that purpose even if this Congress has not appropriated the moneys for that purpose.

The idea that the President of the United States—any President of the United States—is going to declare an emergency simply because he or she did not get the appropriations request they asked for is unprecedented. We have looked. There have been times when people have declared emergencies, but we were not able to find any time where we have a situation like this, where a President, who tried

to get a certain appropriation for a certain purpose out of Congress, didn’t get it and immediately turned around and asked for a national emergency to do what the Congress had just denied them the authority to do.

Just this morning President Trump’s adviser, Kellyanne Conway, was on “FOX & Friends” and said the President had to act because Congress didn’t. In other words, the President had to act because Congress, on a bipartisan basis, through its duly elected representatives, did not give the President of the United States, the Executive, what the Executive asked for. That is why the President gets to declare an emergency.

That would create a lawless situation and a gross violation of our Constitution.

She went on to say: “It’s failed to do its job since he has been President on securing the border, and it has failed to do its job for decades, and so he waited for them.” In other words, because the President is dissatisfied with what the Congress did, he gets to tear up the Constitution and go his own way.

Back in 1983, when President Reagan was frustrated with the Congress and its control of the budget, he received a letter urging him to declare a state of emergency over our Nation’s finances. In response, President Reagan acknowledged his frustration but wrote: “I don’t believe the President has the power to declare an emergency short of war.”

I urge my colleagues—I urge my colleagues—to be cautious in allowing any President to use or claim an emergency in order to undercut the clear division of power set forth in the Constitution between the legislative and the executive branch.

Yesterday Leader MCCONNELL was asked about the legality of President Trump’s move, and the majority leader acknowledged he “hadn’t reached a total conclusion” on whether President Trump is acting legally.

Think about that. You have the majority leader acknowledging that the President may be acting unlawfully. I think it is pretty clear on its face for those who closely examine the Constitution and the power of the purse.

I think we are all called upon not as Republicans or Democrats but as Americans and as Senators in this Chamber to do our job and reject what is clearly an unconstitutional power grab. We should not passively submit to these actions. We should think about what we are going to do in light of the precedent that is being set here, and I hope we will do our jobs.

I will just close with another statement from President Washington’s Farewell Address where he cautioned against allowing any one branch of government to claim excessive power, even with the best of motivations. “Let there be no change by usurpation; for though this, in one instance, may be the instrument of good, it is the customary weapon by which free governments are destroyed.”

In my view, the President’s actions are not for the good, but I know many of my Republican colleagues would agree with the ends the President seeks with respect to using more moneys to build a wall. I understand that is the position of our Republican colleagues, but what George Washington warned us about was—whether we like what the President is doing or don’t like what the President is doing—if the President is diverting money away from the purposes this Senate and the House of Representatives directed to some other purpose this President or any other President may want that we have not authorized, that is a gross usurpation of power, and we should not allow it to happen.

So I ask my colleagues, let’s join together to do the business of the Senate, protect the Constitution, and do our jobs.

I yield the floor.

**THE PRESIDING OFFICER.** The Senator from New Mexico.

**NOMINATION OF ANDREW WHEELER**

**MR. UDALL.** Mr. President, I would associate myself with the comments of Senator VAN HOLLEN, who I think hit the nail on the head when it comes to this overreach by the President.

I rise in support of the growing calls for action on climate change that are echoing in every corner of this Nation.

The science is overwhelming, the evidence is clear, and unless we take immediate action, we will lose our planet as we know it. There is nowhere that has more at stake than my home State of New Mexico and the Southwest, which are in the bullseye of global warming. Unless we act against greenhouse gas pollution, rising temperatures, drought, wildfires, deforestation, we will permanently harm our communities.

Because I believe in climate science and because I believe we desperately need to act, I must strongly oppose the confirmation of Andrew Wheeler to lead our Nation’s Environmental Protection Agency. Mr. Wheeler has consistently advocated for measures that would damage the environment, hurt public health, and do long-term injury to the economy, and his record on climate change and the record of his administration are simply disqualifying.

Mr. Wheeler’s nomination is among the worst in a long line of backward nominations by this President. For someone who wants to lead the EPA—the key word being “protection”—Mr. Wheeler’s priorities are upside down.

Let’s be blunt with the American people. Mr. Wheeler was not nominated to protect the environment and human health. He was nominated to unravel and undo the environmental protections that are now in place. He was nominated to stop any new environmental and public health protections from being initiated. He was nominated to go easy on those who violate existing environmental laws. He was nominated to stand in the way of climate science and climate action.