If you look at Mr. Readler's record and feel that, OK, he tried to deport the Dreamers. Even if you concede past his defense of the Muslim ban or his discrimination against a gay couple who wanted to get married or even if you don't mind that he is trying to make it harder for people to vote or his argument to allow kids under 18 to be sentenced to death—even if none of that bothers you—it should bother you that a Senator in Mr. Readler's home State has not returned a blue slip. It should really bother you. If you say you are for protecting people with preexisting conditions, here is your opportunity.

It is one thing to say: Well, we would never do that. We would never take away protections for people with preexisting conditions. After all, we all know people with preexisting conditions.

I have no doubt that is the actual sentiment among Members of the Senate on both sides. Here is the thing. This week is the week to walk the talk. This week is the week to decide whether or not you are for protecting people with preexisting conditions, because you have a guy who led the effort to gut protections for people with preexisting conditions.

Mr. Readler is unqualified for other reasons, but now we have a litmus test on where you stand on preexisting conditions. It is not enough to say it in your campaign debate. It is not enough to say it in the hallway and say: Hey, we want to protect people.

Here is your moment. Someone who has dedicated some portion of his professional life to gut the American healthcare system is now being given a permanent job on the Sixth Circuit. Everybody should vote no.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk called the roll.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. MANCHIN. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MANCHIN. Madam President, I don't come to the floor that often to ask about or to talk about any person who is being recommended by our President, whether I agree or disagree. This is one time I feel very compelled to do so.

I rise today to urge my colleagues not to confirm Chad Readler to the U.S. Court of Appeals for the Sixth Circuit. I would say this: A vote for him, in my estimation, is a vote against every West Virginian and every American with a preexisting condition, and I will tell you why.

After 20 State attorneys general and Governors challenged the constitutionality of the Affordable Care Act and its protections for people with preexisting conditions in Texas v. United States, as Acting Assistant Attorney General, Readler refused to defend the Affordable Care Act. That is his job. That is the law of the land. He refused, basically, to protect and defend it, which resulted in putting nearly 800,000 West Virginians with cancer, heart disease, asthma, or diabetes and women who care to have a baby at risk of financial jeopardy if they get sick.

Readler was not just a participant but the chief architect of the Department of Justice's decision to not defend the current law in the case. Let me make sure we all understand how devastating this could have been but also the intent. Coming from the Assistant Attorney General, he was not just a participant, but he was the chief architect of the Department of Justice's decision to not defend—to not do his job, to not defend—the current law in the case.

He wrote and filed a brief arguing that the Affordable Care Act's individual mandate is unconstitutional, and that if the mandate is stricken as unconstitutional, the Affordable Care Act's protections for the people with preexisting conditions should also be stricken.

He is taking the position as one person, not as an elected official, saying that it is unconstitutional when we voted in this body not to repeal it. We voted in this body, representing the people of the United States, not to repeal it. He made a decision as one person, not an elected official, saying it is unconstitutional.

This brief was so controversial and inhumane that several career lawyers with the Civil Division refused to sign their name to this brief, and one senior career Department of Justice official resigned because of his decision.

After the Department of Justice's announcement, I introduced a resolution to authorize the Senate legal counsel to intervene in this lawsuit on behalf of the Senate and defend all Americans' right to access affordable health insurance. Because of Readler and the Department of Justice's decision to abandon its responsibility, the court ruled against Americans with preexisting conditions in December.

This misguided and inhumane ruling will kick millions of Americans and tens of thousands of West Virginians off their health insurance. So 800,000 West Virginians with preexisting conditions will be at risk of losing their health insurance, and the thousands of West Virginians who gained health insurance through the Medicaid expansion will no longer qualify. This ruling is just plain wrong, and it is rightfully being appealed to a higher court.

While I continue to fight to pass my resolution to defend Americans and West Virginians with preexisting conditions, I must commend our colleagues in the House who passed a similar resolution earlier this year that allowed their legal counsel to intervene. I wish we had both legal counsel from the House and the Senate intervening together.

In this body, I am known for examining judicial nominees fairly, based on their qualifications, temperament, and judgment, which I take very seriously, but I cannot stand idly by and allow the Senate to confirm a person who singlehandedly tried to rip insurance away from West Virginians and Americans when he had no authority to do so. He was not an elected official, not speaking on behalf of the law, not defending the law but trying to represent his own beliefs or political agenda.

This vote today will show Americans and West Virginias with preexisting conditions who is really fighting for them and all of us who believe strongly in their right to be able to care for themselves. A vote for Mr. Readler is a vote against people with preexisting conditions, and I hope my colleagues on the other side of the aisle will join me in voting against his confirmation.

This is something I don't do often. I don't take it lightly. It is very serious. This gentleman has basically shown it is not about the law; it is not about the Constitution; it is about his politics and himself and not a man who should be sitting on a higher court.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Ms. MURKOWSKI. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mrs. BLACKBURN). Without objection, it is so ordered.

DECLARATION OF NATIONAL EMERGENCY

Ms. MURKOWSKI. Madam President, last week, I announced my intention to vote in favor of H.J. Res. 46. This is a resolution expressing disapproval of the President's February 15 proclamation of a national emergency. At that same time, I joined with my colleague, the Senator from New Mexico, along with the Senator from Maine, Ms. COLLINS, and the Senator from New Hampshire, Mrs. SHAHEEN, in the introduction of the Senate companion, S.J. Res. 10.

I want to take just a few moments this afternoon and speak to my rationale not only for my statements but for my support for terminating the national emergency. It is, certainly, not based on disagreement over the issue of border security on our southern border. I recognize full well, along with, I believe, all of our colleagues here, the situation on the border and the humanitarian issues that face us. The issue that faces us with the level of those coming across our borders is not a sustainable situation, and, certainly, the influx of drugs that we are seeing in this community must be addressed.

Rather, my concern is, really, about the institution of the Congress and the constitutional balance of powers that, I think, are just fundamental to our democracy. In my view, it really comes down to article I of the Constitution. Article I, section 7, clause 8 reads: ''No

Money shall be drawn from the Treasury, but in consequence of Appropriation.''

This provision and the necessary and proper clause of article I, section 8, clause 18 and the taxing and spending clauses—article VIII, clause 1—are just generally regarded as the basis for the notion that the power to spend resides in the Congress. We say it around here—that the power of the purse rests with the Congress.

Of all of these three clauses that I have just articulated, the admonition that no money shall be drawn from the Treasury but in consequence of appropriation is probably the clearest expression of the Framers' view that the executive has no power to spend money in a manner that is inconsistent with the intentions of the Congress.

Justice Story, in his 1883 Commentaries on the Constitution, characterized that clause as an important means of self-protection for the legislative department.

He went on to write:

The [legislature] has, and must have, a controlling influence over the executive power, since it holds at its command all of the resources by which the executive could make himself formidable. It possesses the power of the purse of the nation and the property of the people.

Again, he just very clearly articulates where these lanes of authority—these lanes of jurisdiction—reside.

This past weekend, on Sunday, a local newspaper, the Fairbanks Daily News-Miner, published an editorial. In that editorial, it was argued that our colleagues here in the Senate should vote for the resolution of disapproval. The editorial is entitled: ''A dangerous course: Congress shouldn't cede power to president in border funding dispute.''

Madam President, I ask unanimous consent that the editorial be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Fairbanks Daily News-Miner, March 3, 2019]

A DANGEROUS COURSE: CONGRESS SHOULDN'T CEDE POWER TO PRESIDENT IN BORDER FUNDING DISPUTE

(Editorial Board)

Two reasons for alarm exist regarding President Donald Trump's declaration of a national emergency at the U.S.-Mexico border so that he can reallocate funds approved by Congress for other purposes.

First is the problem of potential precedent. Is building a wall at the border the type of situation envisioned by Congress when it approved the National Emergencies Act in 1976? Or is the president simply declaring a national emergency as a way to overcome a political dispute over a funding allocation?

If it is political dispute and is upheld by the U.S. Supreme Court, where the issue is almost certainly headed, how will Republicans in Congress who support the president's emergency declaration react when—not if—a Democrat occupies the White House and uses the same national emergency logic to force actions on climate change that Republicans find objectionable?

That is one concern.

Republican Sen. Lisa Murkowski earlier indicated she would support a disapproval resolution and Thursday joined fellow GOP Sen. Susan Collins, of Maine, and two Democratic senators to introduce the resolution in the Senate. Sen. Dan Sullivan, Alaska's other Republican senator, has not stated publicly how he will vote.

The Senate resolution is similar to one approved by the House on Tuesday. Rep. Don Young voted against the resolution. The National Emergencies Act requires that the Senate vote on the House resolution; a vote is expected within the next two weeks.

There is also an issue that is greater than that of border security. It is the issue of guarding against encroachment by one branch of government on the power of another.

Members of Congress should be asked these questions: Do you believe the president is properly exercising authority granted by Congress under the National Emergencies Act? Or do you think his emergency declaration is an unacceptable overreach by the executive branch?

Encroachment by one branch on another and the consolidating of power in one branch worried some of the Founders as they crafted our system of independent yet interlocking government branches. The Federalist Papers, the series of 85 writings that aimed to convince the public to support ratification of the Constitution, contain references to that concern.

James Madison wrote in Federalist No. 48, published Feb. 1, 1788, that ''It will not be denied, that power is of an encroaching nature, and that it ought to be effectually restrained from passing the limits assigned to it. After discriminating, therefore, in theory, the several classes of power, as they may in their nature be legislative, executive, or judiciary, the next and most difficult task is to provide some practical security for each, against the invasion of the others.''

''Will it be sufficient to mark, with precision, the boundaries of these departments, in the constitution of the government, and to trust to these parchment barriers against the encroaching spirit of power?''

The concern appears again in Federalist No. 51, written by Madison and Alexander Hamilton and published Feb. 8, 1788: ''The great security against a gradual concentration of the several powers in the same department, consists in giving to those who administer each department the necessary constitutional means and personal motives to resist encroachments of the others. . . . Ambition must be made to counteract ambition.''

Congress, as a co-equal branch of government, should stand up for itself.

President Trump has said he will veto the resolution if it comes to his desk. And at this stage it appears unlikely that there are enough votes in Congress to override that veto.

What each member of Congress says and does in this funding dispute will reveal clearly how they view the law and the relationship between the legislative and executive branches.

Ms. MURKOWSKI. Madam President, in support of the argument outlined in that headline, the News-Miner's editorial board wrote the following:

Encroachment by one branch on another and the consolidating of power in one branch worried some of the Founders as they crafted our system of independent yet interlocking government branches. The Federalist Papers . . . contain references to that concern.

The editorial board goes on to refer to Federalist No. 51, which reads:

The great security against a gradual concentration of the several powers in the same department, consists in giving to those who administer each department the necessary constitutional means and personal motives to resist encroachments of others. . . . Ambition must be made to counteract ambition.

When you translate that into just plain old English, it basically means Congress is a coequal branch of government, and, as such, Congress should stand up for itself. That really is the reason—the root—of why I have announced my support for this resolution of disapproval. I think it is fair to say that we all have disagreements around here about all sorts of things that are part of the appropriations process, and, certainly, the issue of border funding or just border security is no exception.

Even if the fiscal year 2019 appropriations process had run smoothly, which it certainly did not, think about how we got to where we are right now. The President submitted his budget last year. He requested money for barriers on the border and other aspects of border security. The request went through the appropriations process. I serve on that subcommittee. In the Senate subcommittee, we advanced out of the committee the President's request. After 3 months of continuing resolutions, we ended up in a stalemate with the other body last year, calendar year 2018. In January, control of the other body changed. The stalemate continued until the lengthy negotiations concluded, which allowed both bodies to pass and for the President to agree to sign an appropriations package just several weeks ago in February.

Again, that appropriations package was, I think it is probably fair to say, the result of a great deal of back-and-forth between the House, the Senate, and the White House, but it was clearly something that did help to advance the priorities that the President had outlined with regard to the southern border.

I am quoting from a White House fact sheet here, which reads: ''Secured a number of significant legislative victories that further the President's effort to secure the Southern Border and protect our country.'' Chief among those victories was ''the bill provides $1.375 billion for approximately 55 miles of border barrier in highly dangerous and drug smuggling areas in the Rio Grande Valley, where it is desperately needed.''

So we are where we were on February 15 when the administration recognized that significant gains had been made, but I think we all know that the President believes very, very strongly that there is more that should be done, that must be done, and that will be done to address that.

Clearly, there was a disagreement between the Congress and the President about how much could be spent on border security in 2019. I think, in fairness, sticking up for Congress's power of the purse doesn't necessarily mean that it comes at the expense of border security. I believe very strongly we can

address the President's concerns—the very, very real and legitimate concerns that need to be addressed—but that we don't have to do it at the expense of ceding that authority, of ceding that power of the purse, of ceding that article I power that we have here.

There are ways that the President can advance his issues, and he has done so. He, certainly, has the prerogative to ask for supplemental appropriations. He has identified additional funding that is outside of the national emergency designation, or declaration, if you will.

He has identified additional funding—close to $3 billion—from other statutory authorities. These are the authorities under 10 U.S.C. 284(b), which is the counterdrug account, counterdrug funds. That will require a level of reprogramming through the appropriating committees, but that can be done outside of the national emergency. The other source of funding is the Treasury Forfeiture Fund through the Secretary of the Treasury under 31 U.S.C. 9705. So I think it is clear that there are avenues to enhance the funding opportunities to address the situation at the border.

The concern that many of us have raised is the designation in this third account—the designation of a national emergency—that would tap into funds that have already been designated for military construction projects, important construction projects that have been designated around the country. We certainly have many in my State of Alaska. We haven't seen the list that would perhaps outline with greater articulation where the Secretary of Defense might think it would be appropriate to delay some of these projects. But, again, I would just remind—these are projects that have perhaps already been delayed because of the Budget Control Act that has been in place for several years, so I think further delay for many of these projects would cause most concern.

So I come to the National Emergencies Act. I think there is a recognition that when this was adopted, was put into law, it was initially intended to rein in the President's ability to declare emergencies. But at the same time it authorized the President to declare national emergencies, it didn't ever clearly define the extent of that power. So that is an issue that I think we are dealing with right now. Implicit in this grant is the trust that the power will be used sparingly. I think that if you look back over the history, the 59 previous times these powers have been utilized, you can say they have been used sparingly. But also explicit is the authority for the Congress to terminate an emergency if the Congress believes it was imprudently declared, and that is basically where we are today.

Because Congress did not explicitly constrain the President's power to declare an emergency, many of the constitutional scholars—those who are trying to game this out—believe the President will ultimately prevail in the litigation that we are entirely certain will be seen in the courts.

The question for us to consider in this body is not whether the President could have declared an emergency but whether he should have and, again, the question relating to the redirection of military construction funds from our bases around the country to the southern border. These are the questions we are currently debating. But in the final analysis, I look at the issue we have in front of us, and this is really a very challenging place for us as a Congress, to be debating the constitutional powers of the Congress against a legislative agenda—a strong legislative agenda and an important one that the President has. But I have come to be quite concerned about where we are when it comes to precedent and the precedent that we may see unleashed. In many ways, I view this as an expansion of Executive powers by legislative acquiescence.

If we fail to weigh in, if we fail to acknowledge that this designation has gone beyond that which has previously been considered, if we go around, effectively, the will of Congress, where will it take us next? I think we need to think about that because it is so easy to get focused on where we are in the here and now and the situation we are dealing with today, but when we are pushing out those lanes of congressional authority, I think we need to be thinking clearly about what that may mean for future administrations and for future Congresses.

As the chairman of the Energy and Natural Resources Committee, my focus is very often on the energy sector, on the energy space, and so I have asked, if we were in a situation with a new President, what could be invoked if a new President should decide to exercise his or her emergency authorities as they relate to energy? It is entirely possible that a future President could declare a national emergency related to global climate change, speaking to a humanitarian crisis and what it might mean for national security. In fact, one of our colleagues from Massachusetts has already said as much—that a national emergency could be declared as relates to global climate change.

You have to ask the question. What would stop a future President from declaring an emergency and then directing the military to spend billions of dollars on renewable projects or refugee assistance? What is to stop a future President from targeting the Nation's oil and gas supply by cutting off exports and shutting down production on the Outer Continental Shelf?

I think we would all say: Well, we don't need to worry about that happening with our current President; he is not going to do any of those things. But the authorities technically would exist for all of them, and so it is concerning. It is concerning to me that a future President could use that to drive their agenda—again, without the consent of the Congress.

So I repeat—I am concerned that, as a Congress, as a legislative body, we would stand back and we would acquiesce in the use of a national emergency to resolve a disagreement between the executive and the legislative branches over the appropriate level of funding for a situation that likely exceeds what can be spent in our current fiscal year.

I know there will be continued discussion not only here in the Senate, in the Congress, but certainly around the country about these matters. I know some of my colleagues are interested in revisiting the scope of the National Emergencies Act, and that is clearly worth considering. But I firmly believe that one can be strongly for border security and at the same time question whether the administration has overreached in using the National Emergencies Act in the way that it has, and I find myself in that camp. That is why it is with great resolve that I support the adoption of the resolutions of disapproval.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. VAN HOLLEN. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

NOMINATION OF CHAD A. READLER

Mr. VAN HOLLEN. Madam President, I come to the floor to oppose the nomination of Chad Readler to the Sixth Circuit Court of Appeals and to urge my colleagues on both sides of the aisle to oppose this nomination as well.

We have learned that both Senators from Ohio—one a Democrat and one a Republican—had previously proposed mutually agreeable candidates to fill the Sixth Circuit Court position, but despite that prior support, the Trump administration instead nominated somebody who did not have the support from both Senators, which is a device we use to try to encourage nominations that are not way out of the mainstream. We want judicial nominees who are not on the far right nor on any other extreme. Yet this administration decided to ignore that bipartisan support and nominated Mr. Readler for the position on the Sixth Circuit Court of Appeals.

Mr. Readler, unfortunately, has a record that falls well out of the judicial mainstream. I am very concerned about the kind of judicial reasoning and findings he will make as a member of the Sixth Circuit, if he is confirmed.

He has been the Trump administration's point man at the Department of Justice to try to destroy the Affordable Care Act and eliminate the protections the Affordable Care Act has brought to tens of millions of Americans, including protections for people with preexisting health conditions—whether it