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

be a child with asthma, or somebody with diabetes, or anybody who has a preexisting condition health condition. Before the Affordable Care Act was passed, insurance companies would say either we are not going to insure you because you are going to be too expensive to treat or we will provide coverage but only at this price, and then they would quote a price the person couldn't possibly afford.

The Affordable Care Act did away with that discrimination based on preexisting conditions. Yet at the Department of Justice, this nominee, Mr. Readler, was the point person in trying to reimpose discrimination based on preexisting conditions.

Why do we say that? Because over the last couple of years there was a lawsuit filed in the State of Texas. It was filed by the attorney general of the State of Texas and a number of other attorneys general from other States around the country—Republican attorneys general—that went after the Affordable Care Act. They argued that once the Congress passed legislation eliminating the penalties for the mandates, all the rest of the law collapsed. It is a position most legal scholars from all sides of the political spectrum think is an absurd legal conclusion that will not stand the test of time or the test of the courts in the long run.

Despite the fact that the conclusion was way out of the mainstream and directed more out of a political charge to try to undo the Affordable Care Act, nevertheless, Mr. Readler filed the case on behalf of the Justice Department—not in support of the Affordable Care Act, which would be the usual practice of the Department of Justice in protecting the laws of the United States, but deciding, first of all, not to protect it and, secondly, to actively go after the Affordable Care Act and side mainly with the positions of Republican attorneys general who were trying to destroy the law.

This was a very unusual position to take, and many of the career attorneys at the Department of Justice decided not to sign their names to the brief that was filed. They did not want to be associated with a brief that they thought was more a political document than a legal document. In fact, one very respected career attorney at the Department of Justice resigned in protest.

Even our colleague, Senator LAMAR ALEXANDER, said this about the brief that was filed by the Justice Department: It is ''as far-fetched as any I've ever heard.''

Despite the fact that this was a legal position far out of the mainstream—authored by Mr. Readler from his post at the Department of Justice—nevertheless, he went ahead and filed that brief. It is totally inconsistent with the position others claimed they were taking with respect to protecting people with preexisting health conditions. In fact, President Trump tweeted repeatedly that he wanted to protect people with preexisting health conditions.

Many of our Republican colleagues in this Chamber in the Senate, and in the House, said they don't like some parts of the Affordable Care Act, but they want to protect people with preexisting conditions from discrimination by insurance companies. Yet the Texas lawsuit dismantles the Affordable Care Act top to bottom, including getting rid of provisions that protect people with preexisting conditions.

I think it is important to remind people what that means because it means children with expensive, chronic medical conditions will no longer be able to get that kind of coverage.

We also know that before the Affordable Care Act, insurance companies had arbitrary annual caps early in each year. So if a child had a chronic condition and the costs of helping that child, providing medical attention to that child, began to build up, they would sometimes hit that cap before their fifth birthday, and then the family would be on its own. People were paying health plans for coverage and services they needed, only to discover in the fine print that coverage really wasn't there for them when they needed it, and women who became pregnant found that their insurance plans would not cover any of their prenatal care or deliveries. Many of our fellow Americans were diagnosed with cancer only to discover that their plans did not cover chemotherapy.

When the Texas attorney general, with a cohort of other Republican attorneys general, filed that lawsuit against the Affordable Care Act, they filed a lawsuit that put a dagger in the heart of the consumer protections and patient protections we had in the Affordable Care Act. It was Mr. Readler who didn't come to the defense of the law for the Department of Justice but in fact went after the Affordable Care Act and sided with the attorneys general in Texas.

Indeed, there was a U.S. district court judge in Texas who went along with these legal arguments. What that means is, the case is now traveling through the Federal court system. It will go to the circuit courts and may end up at the Supreme Court. So I would hope our colleagues on both sides of the aisle who say they want judges who are going to do the right thing and call the balls and strikes as they see them and who have also said they support protections for people with preexisting health conditions would be nervous about putting someone on the court who says the law requires them to take the opposite position of what our colleagues say they support right now.

As we approach this vote, make no mistake, in many ways, this is a vote on the future of protections for people with preexisting health conditions.

Unfortunately, Mr. Readler has also taken a position on discrimination issues that is very troublesome on other fronts, specifically with respect to LGBT rights. Under his leadership, in his office, the Department of Justice submitted a brief in the case of Zarda v. Altitude Express. In that case, Zarda, who was an employee, alleged that his company had fired him because of his sexual orientation, and the Department of Justice did not take the side against the right of employers to discriminate based on sexual orientation. What they argued was that title VII of the Civil Rights Act does not cover discrimination based on sexual orientation.

Fortunately, in a rare en banc decision, the Second Circuit Court of Appeals held that the LGBT community is protected as a class under the Civil Rights Act, but, unfortunately, because of a circuit split surrounding this issue, it is likely to go up through the court system and find its way to the Supreme Court. The position he took on behalf of the Trump Justice Department is a telltale sign of where Mr. Readler stands on questions of whether the law protects people who have been discriminated against.

I should say this is not a new issue. For many of us, there have been efforts in Congress to address this issue. In my State of Maryland, in 2001, we passed an anti-discrimination act that says it is illegal to discriminate against people based on their sexual orientation in housing, in employment, and in public accommodations. I recall that the bill was filibustered late into the evening by Republican State legislators, but fortunately for Marylanders it passed.

I am also concerned about Mr. Readler's record in taking the side of tobacco companies during his time as a partner at Jones Day, specifically R.J. Reynolds Tobacco Company. Like many of us here, I have worked for many years—first, in the Maryland State Legislature and since then in the U.S. Congress—to curb tobacco use, especially among young people. I hope we all agree we don't want young people to get hooked on tobacco products or to get hooked on nicotine, which we know is very bad for their health and could very likely kill them in the long run. Yet Mr. Readler took the position of the tobacco companies, defining this issue simply as one of the need to have somebody who would stick up for special interests even when it was against the public health interests of the American people.

He represented the tobacco giants in a number of cases—product liability cases and commercial speech cases. In one example, the city of Buffalo, up in New York, passed a ban on tobacco ads within 1,000 feet of facilities frequented by children, like schools, playgrounds, and daycare centers. The purpose of that local ordinance was, of course, to prevent kids from seeing these ads and saying: Hey, that looks like something I want to do. Let's try this tobacco product. Maybe it is a candy-flavored tobacco product, maybe it is another tobacco product. The whole point of the ordinance was to protect the health of kids. Yet Mr. Readler fought against that local ordinance.

The Campaign for Tobacco-Free Kids, which is an organization that rarely, if ever, gets involved in judicial nominations, has found the position Mr. Readler took on behalf of these tobacco companies so far out and so extreme that they have taken the position of opposing the nomination.

So whether it is fighting to dismantle protections for people with preexisting conditions, as Mr. Readler did from his perch in the Trump Department of Justice, or whether it is the positions he took as a lawyer for the tobacco industry, trying to knock down local ordinances and other laws to protect kids from tobacco and getting addicted to nicotine, or the position he has taken not to prevent discrimination but to say our laws do not protect people against basic forms of discrimination, in my view, Mr. Readler is disqualified from taking a position on a court where the goal of every justice, regardless of who appoints them, should be justice itself and making sure everybody who comes before that court gets a fair shake. They should not be positions based on the power of a special interest like the tobacco lobby, and it should not be a decision based on political slogans or political promises. Rather, it should be based on the law itself. So I urge my colleagues to oppose this nomination.

Even among nominees who are very far to the right and who take a very restricted view of our rights and liberties, this is a nominee who finds himself way outside the mainstream.

I urge my colleagues to oppose the nomination of Mr. Readler.

Ms. COLLINS. Mr. President, I rise to announce my opposition to the nomination of Chad Readler to be a Judge on the Sixth Circuit Court of Appeals.

As the Acting Assistant Attorney General of the Justice Department's Civil Division, Mr. Readler was both a lead attorney and policy adviser in the Department's decision not to defend the Affordable Care Act, including its provisions protecting individuals with preexisting conditions.

Rather than defend the law and its protections for individuals with preexisting conditions, such as asthma, arthritis, cancer, diabetes, and heart disease, Mr. Readler's brief in Texas v. United States argued that they should be invalidated.

I strongly objected to DOJ's position to not defend the law, and it is telling that this position also concerned some other career attorneys in the Department. In fact, three career attorneys withdrew from the case rather than support this position, and one of those attorneys eventually resigned.

In my view, the Justice Department's severability argument is wrong and implausible. On June 27, 2018, I wrote to Attorney General Sessions and urged the Justice Department to reverse course and to defend the law's critical protections for individuals with preexisting conditions. Even the Justice Department acknowledged that it was ''rare'' for the government to refuse to defend the laws of the United States against constitutional challenges.

I have continuously stressed the importance of protecting Americans who suffer from preexisting conditions, including 45 percent of Maine's population: 590,000 Mainers. In July 2017, I voted to block several proposals to repeal the ACA, which I feared would reduce protections for individuals with preexisting conditions. In October 2018, I voted to overturn a Trump administration rule that expands the duration of short-term health insurance plans, which could deny coverage to people with preexisting conditions.

Mr. VAN HOLLEN. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. TILLIS. 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. TILLIS. Madam President, I ask unanimous consent that I be allowed to finish my comments before the vote. I expect it to take not more than about 3 or 4 minutes.

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

NOMINATION OF ALLISON JOAN RUSHING

Mr. TILLIS. Madam President, I come to the floor to thank my colleagues who voted and who will be voting to move forward the nomination of Allison Joan Rushing to be the U.S. Circuit Court judge for the Fourth Circuit.

Ms. Rushing has a great history in North Carolina. She is actually from East Flat Rock, NC. Both of her parents were educators who taught in the North Carolina public school system. She received her degree with honors from Wake Forest, and she received her law degree from Duke University. She now has over 11 years of experience practicing law and is really considered one of the fast-rising stars of the legal profession.

I have had the opportunity to get to know Ms. Rushing through the nomination process, and I know she is going to do a great job as a circuit court judge on the Fourth Circuit.

From the ABA, she has received from a substantial majority a ''qualified'' rating and from a minority a ''well qualified'' rating. She is clearly qualified to do this job. She is young. She is bright. She is a topnotch litigator, and I look forward to casting my vote here in a couple of minutes. Again, I think my colleagues will also be casting a vote in support of confirming this nomination.

The PRESIDING OFFICER. Under the previous order, all postcloture time has expired.

The question is, Will the Senate advise and consent to the Rushing nomination?

Mr. TILLIS. Madam President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from New Mexico (Mr. HEINRICH), the Senator from Vermont (Mr. SANDERS), and the Senator from Arizona (Ms. SINEMA), are necessarily absent.

The PRESIDING OFFICER (Mr. CASSIDY). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 53, nays 44, as follows:

[Rollcall Vote No. 35 Ex.]

YEAS—53

Alexander	Fischer	Perdue
Barrasso	Gardner	Portman
Blackburn	Graham	Risch
Blunt	Grassley	Roberts
Boozman	Hawley	Romney
Braun	Hoeven	Rounds
Burr	Hyde-Smith	Rubio
Capito	Inhofe	Sasse
Cassidy	Isakson	Scott (FL)
Collins	Johnson	Scott (SC)
Cornyn	Kennedy	Shelby
Cotton	Lankford	Sullivan
Cramer	Lee	Thune
Crapo	McConnell	Tillis
Cruz	McSally	Toomey
Daines	Moran	Wicker
Enzi	Murkowski	Young
Ernst	Paul	

NAYS—44

Baldwin	Harris	Reed
Bennet	Hassan	Rosen
Blumenthal	Hirono	Schatz
Booker	Jones	Schumer
Brown	Kaine	Shaheen
Cantwell	King	Smith
Cardin	Klobuchar	Stabenow
Carper	Leahy	Tester
Casey	Manchin	Udall
Coons	Markey	Van Hollen
Cortez Masto	Menendez	Warner
Duckworth	Merkley	Warren
Durbin	Murphy	Whitehouse
Feinstein	Murray	Wyden
Gillibrand	Peters	

NOT VOTING—3

Heinrich	Sanders	Sinema

The nomination was confirmed.

The PRESIDING OFFICER. Under the previous order, the motion to reconsider is considered made and laid upon the table, and the President will be immediately notified of the Senate's action.

CLOTURE MOTION

The PRESIDING OFFICER. Pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will state.

The bill clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the nomination of Chad A. Readler, of Ohio, to be United States Circuit Judge for the Sixth Circuit.

Mitch McConnell, David Perdue, Roy Blunt, John Cornyn, Joni Ernst, Lindsey Graham, John Boozman, Mike Rounds, Thom Tillis, Steve Daines, James E. Risch, John Hoeven, Mike Crapo, Shelley Moore Capito, John Thune, Pat Roberts, Jerry Moran.