

Yes, Trump can declare an emergency

On the roster: Yes, Trump can declare an emergency - New border wall fight is Trump vs. Texas landowners - Harris eyes MLK day for kickoff - Steve King draws primary challenger amid uproar - Clean up in the produce department

YES, TRUMP CAN DECLARE AN EMERGENCY

Congress did not get to be so terrible overnight.

Feckless and incompetent, our legislative branch stumbles forward without direction or even a modest impulse toward self-preservation. But unlike the proverbial turtle on a fence post, it mostly got there by itself.

It may be dismaying for Democrats to hear just now, but **President Trump** most assuredly has the authority to declare a national emergency concerning matters of immigration. He has that authority because the Congress explicitly gave such power to the executive branch in 1976.

In the wake of **Richard Nixon**'s reign, Congress still devolved its own authority to an executive branch that had just proven itself to be an unreliable custodian of liberty.

The first president to issue an emergency proclamation was, not surprisingly, **Woodrow Wilson**, no fan of Congress or the Constitution. He established the United States Shipping Board which, essentially, made the government into a shipbuilding company. His three Republican successors did not follow suit, **Calvin Coolidge** especially abjured such monarchical power.

Franklin Roosevelt, however, had no such qualms and exerted broad executive authority over the ways Americans lived and worked, citing the emergency of a worldwide depression.

Eventually the Supreme Court did intervene, telling Roosevelt's successor **Harry Truman** that no, he could not nationalize the steel industry because of some murky combination of the Soviet Union and labor disputes.

Things stayed murky for a while, even as Nixon's royalist impulses led to new "emergencies," including one to address striking postal workers in 1970.

The joke here is that the devolution of congressional authority that today gives Trump the power to override a clearly stated congressional refusal came from a Congress that was trying to put a check on executive authority. It was the same Democratic congressman who oversaw the effort to bring articles of impeachment against Nixon who spearheaded the National Emergencies Act. When **Gerald Ford** signed it into law it was received as a defeat for executive authority.

Har-de-har-har.

Consider that. Immediately after the previous high tide of abuse of executive authority and in the wake of a president being forced from office for lying about the illegal activities of his administration the Congress of these United States went ahead and granted broad authorities to the executive branch.

We don't have enough test cases to know for sure, but the constitutional legitimacy of the law is dubious at best. Like our friend Judge **Andrew Napolitano** would say: "Legal but not constitutional."

When Trump said today that it would "be very surprising [to him] that [he] would not declare a national emergency" it sounded preposterous and not just for his garbled syntax. Congress has repeatedly refused the president's demands for an additional \$4 billion or so in border security funding. Does the president really have the power to deploy the military to circumvent Congress?

Yup.

Like many great civilizations before us, America is slouching toward authoritarianism. Democracies tend toward kingship in almost every case since charismatic leaders and demagogues are so successful at deceiving voters by appealing to emotion rather than reason.

Our founders rejected pure democracy for that very reason. That's why we have a republic in which institutions and a constitutional separation of powers prevents authority from coagulating. The same Democrats who now decry Trump's claims of magisterial power include some of those who said, for instance, that Trump's predecessor had the authority to mint a \$1 trillion coin in order to circumvent

congressional authority over borrowing.

There are many crises in America today. That may include our chaotic and malformed immigration regime. But it also includes our pitiful Congress, partisanship and electoral cowardice has made the branch of government intended to be the first among equals into a vassal.

THE RULEBOOK: INFERIORITY COMPLEX

“There is evidently a great inferiority in the power of the President, in this particular, to that of the British king; nor is it equal to that of the governor of New York, if we are to interpret the meaning of the constitution of the State by the practice which has obtained under it.” -**Alexander Hamilton**, *Federalist No. 69*

TIME OUT: DRILL ON

History: “On this day in 1901, a drilling derrick at Spindletop Hill near Beaumont, Texas, produces an enormous gusher of crude oil, coating the landscape for hundreds of feet and signaling the advent of the American oil industry. The geyser was discovered at a depth of over 1,000 feet, flowed at an initial rate of approximately 100,000 barrels a day and took nine days to cap. Following the discovery, petroleum, which until that time had been used in the U.S. primarily as a lubricant and in kerosene for lamps, would become the main fuel source for new inventions such as cars and airplanes; coal-powered forms of transportation including ships and trains would also convert to the liquid fuel. Crude oil, which became the world’s first trillion-dollar industry, is a natural mix of hundreds of different hydrocarbon compounds trapped in underground rock.”

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SCOREBOARD

Trump job performance

Average approval: 42 percent

Average disapproval: 53.4 percent

Net Score: -11.4 points

Change from one week ago: unchanged

[Average includes: Gallup: 40% approve - 55% disapprove; USA Today/Suffolk: 42% approve - 54% disapprove; Quinnipiac University: 39% approve - 52% disapprove; NBC/WSJ: 43% approve - 54% disapprove; Fox News: 46% approve -

52% disapprove.]

NEW BORDER WALL FIGHT IS TRUMP VS. TEXAS LANDOWNERS

AP: “As President **Donald Trump** travels to the border in Texas to make the case for his \$5.7 billion wall, landowner Eloisa Cavazos says she knows firsthand how the project will play out if the White House gets its way. The federal government has started surveying land along the border in Texas and announced plans to start construction next month. Rather than surrender their land, some property owners are digging in, vowing to reject buyout offers and preparing to fight the administration in court. ... Trump is scheduled to visit the border Thursday in McAllen, a city of 143,000 on the river. ... The government has laid out plans that would cut across private land in the Rio Grande Valley. Those in the way include landowners who have lived in the valley for generations, environmental groups and a 19th century chapel. Many have hired lawyers who are preparing to fight the government if, as expected, it moves to seize their land through eminent domain. ... Even a compromise solution to build ‘steel slats,’ as Trump has suggested, or more fencing of the kind that Democrats have previously supported would likely trigger more court cases and pushback in Texas. Legal experts say Trump likely cannot waive eminent domain — which requires the government to demonstrate a public use for the land and provide landowners with compensation — by declaring a national emergency.”

The Judge’s Ruling: To build or to not build a wall - This week Judge **Andrew Napolitano** asks if the president alone can build a border wall: “The Constitution is the supreme law of the land. ... All federal powers come from the Constitution — and from no other source. ... President Trump has no power to build a wall or a fence or a doghouse on private property without an express or implied congressional authorization to do so. The vast majority of the property in Texas on which he wants to build is private, according to Rep. **Will Hurd**, R-Texas, whose district contains a longer stretch of the border than anyone else’s. Thus, the federal government must use eminent domain, which gives each landowner the right to a trial to challenge the government as to the worth of the property the government wants. ... A valid emergency declaration streamlines the government to address the emergency, but it cannot authorize anything that the Constitution prohibits, nor can it authorize the president to avoid anything that the Constitution requires.” More here.

Graham gathered senators for last-ditch attempt to end shutdown

- Politico: "Sen. **Lindsey Graham** is throwing a Hail Mary to reopen the government. Graham brought together a half dozen Republican senators Wednesday afternoon in a last-ditch attempt to resolve the three-week stalemate before President Donald Trump deploys an explosive emergency declaration to build his border wall. The Republican senators were joined mid-meeting by White House emissaries **Jared Kushner** and **Shahira Knight**, the president's congressional liaison. Democrats were not invited to participate in the meeting, which largely comprised of centrist Republicans, including Sens. **Rob Portman** (R-Ohio) and **Susan Collins** (R-Maine). The participants emphasized that the discussions were preliminary in nature, but some of these senators are scheduled to meet Thursday with Senate Majority Leader **Mitch McConnell** to continue the discussions, according to congressional sources."

Trump cancels trip to World Economic Forum in Davos, cites funding standoff - Fox News: "President Trump announced he is canceling his upcoming trip to the World Economic Forum in Davos Switzerland, citing the government funding standoff. 'Because of the Democrats intransigence on Border Security and the great importance of Safety for our Nation, I am respectfully cancelling my very important trip to Davos, Switzerland for the World Economic Forum,' he tweeted."

HARRIS EYES MLK DAY FOR KICKOFF

KCBS: "Sen. **Kamala Harris** has decided to run for president in 2020 and will announce her candidacy on or around **Martin Luther King Jr.** Day, probably at a campaign rally in Oakland, sources close to the freshman senator from California tell KCBS Radio. Harris, 54, has been making the rounds of television talk shows and appearing at several events this week as part of a brief tour to promote her new book, 'The Truths We Hold: An American Journey.' At every stop, when asked about running for president, Harris has answered with some variation of 'I'm not ready yet' to announce her decision, citing family considerations. But several sources knowledgeable about her plans say she is ready, and has in fact decided to run, with the enthusiastic blessing of her husband and two stepchildren. The debate within her camp is how, and where, to launch her campaign. The tentative plan is for Harris to enter the race for the Democratic presidential nomination with a campaign rally, most likely in Oakland, where she was born and began her legal career."

Sanders issues apology for harassment of female staffers on 2016

campaign - Politico: “Sen. **Bernie Sanders** (I-Vt.) apologized Thursday to women who said they were sexually harassed while working on his 2016 presidential campaign. His comments to reporters in the Capitol came shortly after POLITICO reported that a 20-something female staffer said she was forcibly kissed by a top Sanders adviser at a bar in Philadelphia on the final night of the Democratic National Convention. ‘It appears that as part of our campaign, there were some women who were harassed or mistreated. And I thank them, from the bottom of my heart, for speaking out,’ Sanders said after a press conference about a prescription drug bill he’s supporting. ... ‘To the women in our campaign who were harassed or mistreated, I apologize,’ he added. ... Sanders said he was not previously aware of the incident detailed by POLITICO.”

The Beto show goes to the dentist - Politico: “‘So, I’m here at the dentist.’ Thus began **Beto O’Rourke’s** latest dispatch from El Paso, Texas, where the potential presidential contender filmed himself in a green bib — and with dental tools in his mouth — talking with his dental hygienist about life on the U.S.-Mexico border. The unusual video, posted on Instagram, left jaws agape in Washington on Thursday. But it is in keeping with O’Rourke’s practice of livestreaming virtually anything — and, more recently, of focusing attention on the lives of people living along the U.S.-Mexico border. Introducing viewers to **Diana**, his dental hygienist, O’Rourke asked her what she wanted people to know about the border, as President Donald Trump continues to press for funding for a border wall.”

Ocasio-Cortez’s ‘Green New Deal’ emerges as litmus test - Fox News: “A growing number of Democrats considering a presidential bid have signaled support for the sweeping ‘Green New Deal’ pushed by Rep. **Alexandria Ocasio-Cortez** and other liberal lawmakers, underscoring how the 2020 field is being pulled further left by the influential progressive wing. ... Higher-profile potential candidates ranging from Sen. **Elizabeth Warren** to Sen. **Cory Booker** also have voiced support. ... Sen. Bernie Sanders, I-Vt. ... along with Rep. **Tulsi Gabbard**, D-Hawaii. Sen. **Jeff Merkley**, D-Ore., endorsed the proposal last month and said he would introduce his own version of a Green New Deal in 2019. ... Former Obama administration Housing and Urban Development Secretary **Julian Castro**, poised to make a 2020 announcement this weekend, will reportedly support the proposal... And Democratic darling Beto O’Rourke ... is apparently supportive of the ‘concept.’ ... Other 2020 prospects, like Sen. Kamala Harris, D-Calif., and

Sen. **Sherrod Brown**, D-Ohio, have weighed in, but not yet offered official positions on the plan.”

STEVE KING DRAWS PRIMARY CHALLENGER AMID UPROAR

AP: “A three-term Iowa state senator says he plans to challenge longtime U.S. Rep. **Steve King** in next year’s Republican primary. **Randy Feenstra**, an assistant Republican legislative leader, announced Wednesday he intended to run for the northwest Iowa seat and has opened a federal campaign committee. Without mentioning King by name, Feenstra said the district doesn’t have a voice in Washington ‘because our current representative’s caustic nature has left us without a seat at the table.’ He added Iowans don’t need more ‘sideshows or distractions.’ King just began his ninth term. He’s known for hardline views on immigration, abortion and gun rights. Democrats and sometimes Republicans have criticized his blunt comments. King has typically won re-election easily in the solidly Republican district but narrowly defeated his Democratic opponent in November.”

Yet another Kansas Republican eyes Senate run - The Wichita Eagle: “Kansas Senate President **Susan Wagle** plans to form an exploratory committee in anticipation of a possible run for the U.S. Senate. Wagle, a Wichita Republican, said Wednesday she is taking a ‘serious look’ at a campaign after Sen. **Pat Roberts** announced last week he will not run again in 2020. Wagle - whose state Senate term will end in two years - has a reputation as a hardline conservative. She is also the first woman to serve as president of the Kansas Senate. In an interview, she emphasized her frustration with the continued partial federal government shutdown.”

PLAY-BY-PLAY

House Dems waste no time pushing legislation to put pressure on GOP - Roll Call

WH legal team gets ready to defend Trump’s executive privilege as House Dem investigations loom - WaPo

AUDIBLE: YIKES

“White nationalist, white supremacist, Western civilization — how did that language become offensive?” - Rep. Steve King, R-Iowa, talking to the NYT.

FROM THE BLEACHERS

“In yesterday’s opinion you stated ‘...there’s far more cynicism than gullibility at

play. This is about winning and losing. Republicans who are cheering on the shutdown would cheer just as hard if it was \$3 trillion or \$3. Forcing Democrats to knuckle under is the idea'. In fact, building additional physical barriers and being a 'hawk' on immigration has been a position popular among Republicans since at least 2005. Trump did not create this, he tapped into it and used it to win the primary. We support the shutdown because we have wanted additional physical borders for over a decade. 5.1 billion is a pittance compared to our 4 trillion budget, but it is much more than the 1.4 billion given in the Secure Fences act in 2006." - **Eric Scott**, Jacksonville, Fla.

[Ed. note: I certainly do not doubt the sincerity of immigration hawks. That is why it is the most potent political issue in our country today. Nor do I doubt the sincerity of the doves. What I lament is the current melodrama playing out in Washington. Democrats have voted to fund physical barriers, including for projects still ongoing. Their proposal would fund physical barriers. Meanwhile, I hear Republicans explaining that it would be catastrophic. This fight is so particularly pitiful because it is so transparently demagogic. "Build the wall that not a wall!" "Never! We will only build fences that look like walls!" I would say it was stupid except for the fact that it is savvy. It keeps considerable swaths of the electorate glued to the action as if it was an existential question. The difference between the two sides is, as you observe, a pittance. It's even less than the amount of money that won't be paid out to federal workers this week. Both sides here are looking to inflict maximum political damage to the other side, consequences be damned. Wherever one thinks the needle should fall on the spectrum between \$1.6 billion and \$5.7 billion, America deserves a government that is more than a cheesy soap opera.]

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CLEAN UP IN THE PRODUCE DEPARTMENT

WAPT: "A Jackson, Mississippi, grocery store was shut down after six women got into a fight inside the business. Investigators said a security guard was injured when he tried to break up the fight, which was recently reported at a Food Depot. Witnesses said the women were throwing cantaloupes and produce and hit the guard over the head with a glass bottle of syrup. He was taken away in an ambulance. The women left behind a mess, including torn-out hair extensions and

broken merchandise, witnesses said. It's unclear if any arrests were made."

AND NOW, A WORD FROM CHARLES...

"Best to mandate nothing. Let the customer decide. A 60-year-old couple doesn't need maternity coverage. Why should they be forced to pay for it? And I don't know about you, but I don't need lactation services." - **Charles Krauthammer** (1950-2018) writing in the *Washington Post* on March 30, 2017.

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