

To best maintain that balance, this confrontation should be resolved in the political realm, not in the courts.

THE NATIONAL EMERGENCY

But the lawsuits over the emergency declaration will probably reach the Supreme Court, and the court might well hold Trump's emergency declaration unconstitutional.

That would set a precedent that would unduly limit national emergency power that some future president may need.

Alternatively, the court could decide the lawsuits in Trump's favor. That would invert the entire constitutional order, where Congress appropriates and the president spends. It would undercut the checks and balances provided by the framers and lead to an incredibly powerful presidency.

Either result the court reaches would set a bad precedent.

Congress can avert this problem.

The 1976 National Emergencies Act gives Congress power to invalidate a president's declaration of emergency by a resolution passed by simple majorities of both houses.

The House voted 245-182 on Tuesday to overturn President Trump's national emergency declaration. Democrats were joined by more than a dozen Republicans in the vote. The Senate will now take up the measure, though a vote has not been scheduled.

White House adviser Stephen Miller has already suggested that Trump would veto any such resolution.

"He's going to protect his national emergency declaration. Guaranteed," Miller said on Fox News. Both the House and the Senate would then need two-thirds majorities to override his veto.

We believe that for Congress to protect the constitutional order, its members must muster the necessary two-thirds majority.

TO THE COURT

If Congress does not override the president's veto, the lawsuits will probably go to the Supreme Court. The court's decision has strong potential to do harm to the historic constitutional balance.

That balance was upheld by the Supreme Court in a crucial decision more than 50 years ago.

On April 9, 1952, President Truman declared a national emergency. In the midst of the Korean War, he seized the country's steel mills on the eve of a nationwide strike because steel was necessary to make weapons. The steel companies immediately brought a lawsuit against the seizure in federal court.

Recognizing the importance of the issue, the Supreme Court heard arguments on May 12, and handed down its decision on June 2.

The court, in *Youngstown Company v. Sawyer*, rejected the president's claim by a 6-3 majority.

Justice Robert Jackson wrote an opinion proclaiming a general approach to the balance of powers between Congress and the president, rather than a fixed rule.

Jackson declared that "when the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum."

The president's power, Jackson wrote, is in a "zone of twilight" when Congress has not spoken. When "the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb."

PRESIDENT AGAINST CONGRESS

President Trump is acting contrary to Congress's will by appropriating money Congress has refused to appropriate. He signed a carefully constructed compromise budget bill passed by more than veto-proof two-

thirds majorities in both houses. He accepted the U.S. \$1.375 billion that the bill gave him for a border wall.

He then broke the deal by declaring a national emergency to allocate an additional \$6.7 billion to pay for border wall construction.

In two important cases, the Supreme Court has broadly prohibited Congress from giving any of its appropriations authority or responsibility to the president—even voluntarily.

Congress's adoption of a joint resolution seeking to invalidate Trump's emergency declaration—an explicit statement of congressional will—would provide conclusive evidence that would only strengthen the argument that the president is acting contrary to Congress's will.

PRESERVING THE CONSTITUTIONAL BALANCE

If the case gets to the Supreme Court, the president's lawyers might argue that for Congress to decisively oppose an emergency declaration of the president, lawmakers must override his veto by a two-thirds vote.

Imposing such a veto override requirement, however, would eliminate the court's role. That's because a presidential declaration of emergency is immediately invalid if Congress overrides a presidential veto.

Two-thirds overrides are historically unlikely by Congress. And requiring a two-thirds vote would give a president who declares a national emergency virtually unlimited power to appropriate money to his or her heart's content—perhaps hundreds of billions of dollars to address, for example, climate change by subsidizing construction of wind farms.

Requiring Congress to override a presidential veto that protects a presidential appropriation would turn the appropriations power and the Constitution's checks and balances inside out.

Congress has already spoken through passing the spending bill and will be considering a resolution to invalidate the president's declaration of emergency.

Such a resolution, even if vetoed by the president, places President Trump's declaration in Justice Jackson's category where presidential power "is at its lowest ebb."

It also preserves the historic flexibility by allowing the court's decision to give deference to the votes of Congress in cases of claimed emergencies.

This story has been updated to reflect the House vote on Feb. 26, 2019, on the resolution to overturn President Trump's national emergency declaration.

Mr. ALEXANDER. I yield the floor.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. WICKER. Madam President, what is the pending business?

The PRESIDING OFFICER. The pending business is the Rushing nomination.

Mr. WICKER. Madam President, I ask unanimous consent to speak as in morning business for no more than 10 minutes.

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

REMEMBERING BORIS NEMTSOV

Mr. WICKER. Madam President, on Sunday, February 24, thousands of people marched in Moscow and in cities across Russia to remember Boris Nemtsov, a Russian statesman and friend of freedom who was gunned down in sight of the Kremlin walls 4 years ago.

These people were honoring a Russian patriot who stood for a better fu-

ture—a man who, after leaving the pinnacle of government, chose a courageous path of service to his country and his fellow Russians. Boris Nemtsov was a man who walked the walk. When others were silent out of fear or complicity, he stood up for a future in which the Russian people need not risk jail or worse for simply wanting a say in how their country is run.

Sadly, since Mr. Nemtsov's assassination, the risks of standing up for what is right have grown in Russia. With every passing month, ordinary citizens there become political prisoners for doing what we take for granted here in the United States—associating with a political cause or worshipping God according to the dictates of one's conscience.

Last month alone, in a high-profile case, a mother was jailed for the crime of being a political activist in Russia. She was kept from caring for her critically ill daughter until just hours before her daughter died. Jehovah's Witnesses have been sentenced to years behind bars for practicing their faith. Also, a leader of a small anti-corruption organization was beaten to death with metal rods on the outskirts of Moscow. This was all just in February, and it is not even a comprehensive account of the Russian state's using its powers not against real enemies but against its own people—peaceful citizens doing what peaceful citizens do.

As for the Nemtsov assassination, 4 years later, justice has yet to be served. It appears that President Putin and his cronies have little interest in uncovering and punishing the masterminds behind Russia's highest profile killing in recent memory. While a few perpetrators who had been linked to the Kremlin-appointed leader of Chechnya, Ramzan Kadyrov, were convicted and sent to prison, Mr. Nemtsov's family, friends, and legal team believe the organizers of his murder remain unidentified and at large.

I understand that Russia's top investigative official has prevented his subordinates from indicting a close Kadyrov associate, Major Ruslan Geremeyev, as an organizer in the assassination, and the information linking Geremeyev to Mr. Nemtsov's murder was credible enough for a NATO ally to place Geremeyev on its sanctions list. Yet there has still been no indictment. Russian security services continue to forbid the release of footage from cameras at the site of the assassination. Russian legal authorities refuse to classify the assassination of a prominent opposition leader and former First Deputy Prime Minister as a political crime. Despite all of this, they have declared the case solved.

Given this pattern of deliberate inaction on the part of Russian authorities, the need for some accountability outside of Russia has grown more urgent. Russia and the United States are participating states in the Organization for Security and Cooperation in Europe, or the OSCE, and have agreed

that matters of justice and human rights are of enough importance to be of legitimate interest to other member states. Respect for these principles inside a country is often a predictor of the country's external behavior. So countries such as ours have a reason to be involved.

At the recent meeting of the OSCE's Parliamentary Assembly, we began a formal inquiry into Mr. Nemtsov's unsolved murder and have appointed a rapporteur to review and report on the circumstances of the Nemtsov assassination as well as on the progress of the Russian investigation. As the chair of the U.S. delegation to the OSCE Parliamentary Assembly, I supported this process from its conception at an event I cohosted last July in Berlin.

Yet, as the United States of America, there is more we can do. To that end, I am glad to cosponsor a resolution with my Senate colleagues that calls on our own government to report back to Congress on what we know of the circumstances around Boris Nemtsov's murder. This resolution also calls on the Treasury Department to use tools like the Magnitsky Act to sanction individuals who have been linked to this brutal murder, such as Ruslan Geremeyev.

We hear constantly from Russian opposition figures and civic activists that personal sanctions, such as those imposed by the Magnitsky Act, have a deterrent effect. Vladimir Putin has made it abundantly clear that these sanctions, based on personal accountability, are more of a threat to his regime than blunter tools, such as sectoral sanctions, that often feed his propaganda and end up harming the same people we are trying to help in Russia—innocent citizens. To its credit, the Trump administration has done a better job than had the previous administration in its implementing of the new mandates and powers Congress authorized in both the Russia and Global Magnitsky Acts. We are in a much different place than we were when these tools were originally envisaged nearly 10 years ago.

The administration is mandated to update the Magnitsky Act's list annually, with there being a deadline in December that sometimes slips into January. Now it is already March, and we have yet to see any new designations under the law that the late Mr. Nemtsov himself called the most pro-Russian law ever adopted in a foreign legislature. While the law has been lauded by Russian democrats, it is rightly despised by those like Vladimir Putin who abuse and steal from the American people.

Recall that it was at the Helsinki summit late last summer between the leaders of Russia and the United States of America—perhaps the grandest stage in U.S.-Russian relations in a decade—where Mr. Putin himself requested that his investigators be able to depose U.S. officials most closely associated with passing and implementing the

Magnitsky law, as if they were criminals.

We need to show the Russian dictator that this sort of bullying will not stand and that we will continue to implement the Magnitsky Act thoroughly and fairly.

A year ago, I participated—along with many of my colleagues in the House and Senate—in the unveiling of Boris Nemtsov Plaza in front of the Russian Embassy here in Washington, DC—the first official memorial to Boris Nemtsov anywhere in the world.

One day, I hope there will be memorials to Boris Nemtsov all across Russia, but the best tribute to his memory will be a Russia he wanted to see, a just and prosperous Russia, at peace with its neighbors and a partner with the United States.

I yield the floor.

The PRESIDING OFFICER (Mr. BOOZMAN). The Senator from Iowa.

UKRAINE

Ms. ERNST. Mr. President, I rise to speak on Russia's ongoing and illegal occupation of Ukraine.

Two weeks ago, I had the opportunity to travel to Ukraine where I saw firsthand the effects of nearly 5 years of Russian occupation, aggression, and hostilities suffered by the Ukrainian people.

Since Russia's illegal seizure of Crimea in March of 2014 and their subsequent invasion of eastern Ukraine's Donbas region the following month, over 10,000—10,000—people have been killed and many more have been wounded or displaced in the fighting. Hiding behind so-called pro-Russian separatists in eastern Ukraine, the regime of Vladimir Putin has indiscriminately targeted both civilian and military targets, across the line of contact, in flagrant violation of the Minsk ceasefire and the law of war. In fact, shelling was occurring just 1 day prior to my visit to the Eastern Front.

The Eastern Front, even saying it now, before my colleagues in the Senate, the phrase seems almost surreal and harkens back to a bygone era in which the Cold War dominated our political landscape.

The first time I visited Ukraine was in 1989—1989—as part of an agricultural exchange program. The Soviet Union was on the verge of collapse, and the spirit of independence, freedom, and self-determination was gaining steam. My gracious Ukrainian hosts didn't want to discuss farming. It was an agricultural exchange, but they didn't want to discuss farming. They wanted to know what it was like to be an American. They wanted to know what it was like to have freedom and be independent.

Just like the oppressive yoke of authoritarianism dominated Ukraine in 1989, it once again threatens a people who have fought hard to create a nation of laws accountable to its people and as champions of human dignity, free markets, and democratic values. With our help, Ukraine has managed to

hold the line against the Russian aggressors. Our security assistance, in the form of intelligence-sharing, special operations capacity-building, and, most recently, the delivery of Javelin anti-tank weapons, has enabled the Ukrainian Armed Forces to deter further Russian advances into free Ukraine and has caused the Russian military forces in occupied Donbas to pull their tanks farther away from the frontline.

Unfortunately, Russia has found other ways to attack Ukrainian interests. In November of 2018, just a few months ago, Russian naval vessels opened fire and captured three Ukrainian ships along with 24 sailors in international waters just south of the Kerch Strait. Demonstrating his contempt for the international rules-based order, Vladimir Putin is using his naval supremacy in the region to slowly strangle the Ukrainian economy, which relies, in part, on steel and grain shipping from ports in the Sea of Azov. While our military aid has been successful in assisting Ukrainian efforts along the line of contact in Donbas, future military aid must take into account Ukraine's need for defensive weapons and asymmetric capabilities to counter Russian aggression both on land and at sea. Only then can Ukraine adequately defend its people and sovereignty.

In addition to hostile military action, Russian intelligence has been working to undermine the upcoming Ukrainian Presidential and parliamentary elections. Much like the interference in our own elections in 2016, Putin is seeking to sow discord, spread confusion, and undermine the democratic system that has taken root in Ukraine. This is indicative of Russia's global strategy, which seeks to drive a wedge between the United States and our allies, undermine democratic governments, and return to an era of power politics in which brute strength rather than the rule of law governs global interactions.

China has adopted a similar, albeit more subtle and increasingly aggressive, strategy in Asia, with an overarching goal of displacing American global leadership. Thus, it is more important than ever for the United States to work by, with, and through our allies around the world to ensure a future in which our values of freedom, the rule of law, human rights, and free markets prevail for generations to come.

Today freedom's frontier runs through the line of contact in eastern Ukraine. We must never turn our backs on a people yearning for the same freedoms we enjoy in the United States. Doing so not only legitimizes the actions of thugs—yes, thugs—around the world but will inevitably threaten our own rights and freedoms tomorrow, which many of us take for granted today.