

## A President's Day Gift

By Marta Studnicka, J.D. Candidate 2021 | February 19, 2019

In an early celebration of President's Day, President Trump gifted himself [\\$5.7 billion](#) to build the border wall. Trump declared a national emergency on Friday to divert tax dollars to the wall, seemingly determined to test the constitutional boundaries of the executive branch.

[Sixteen states, led by California](#), have not been afraid to challenge Trump's declaration. [The coalition](#) filed suit against President Trump and his administration in the Northern District of California on Monday. The states justify the suit as a way to protect their residents, as well as economic and environmental interests. Additionally, three Texas landowners filed suit against Trump to protect their property rights.

So, what does this all mean? The legal challenges are likely to slow down Trump's efforts, but will they be able to stop him? The courts have previously addressed the limits of executive power. In [Youngstown Sheet & Tube Co. v. Sawyer](#), the Supreme Court put forth the [analytical framework necessary](#) to an evaluation of executive power. Notably, executive power is at its weakest when it opposes an explicit act of Congress — such as an allocation of taxpayer dollars.

President Trump seems to be standing on shaky ground. Congress has the exclusive power to tax and spend, and it explicitly chose *not* to fund the border wall. Trump's legal team, however, could point to the fact that Congress routinely allows for discretionary spending, usually to bridge the budgetary gaps of federal agencies.

The statutory route does not look much better for Trump. Neither the [National Emergencies Act](#) nor the [Disaster Relief and Emergency Assistance Act](#) is likely to justify the use of emergency power to build the wall. Overall, the courts have been cautious about granting too much power to the executive branch. Thus, it is unlikely that President Trump will prevail.

