Hamline University Professor Says Trump has Backed Off From Using Emergency Powers to Build the Wall is because He Lacks the Legal Authority to Do It

Hamline University Professor David Schultz contends in an op-ed that the reason why President Trump has backed off from declaring an emergency to build the wall along the Mexican border is because he lacks the legal authority to do it.

SAINT PAUL, Minn. (PRWEB) January 17, 2019 -- Hamline University professor David Schultz, noted expert on American politics and constitutional law, argues in a recent Counterpunch op-ed that President Trump’s backing away from invoking the National Emergencies Act to build his Mexican wall is recognition that he lacks the legal authority to act.

As Schultz declares in the opening paragraph of his oped: “The more President Trump changes his mind about declaring a national emergency to build his wall the less likely it is that he has the authority to do it. But even if he had declared a national emergency immediately, it is unlikely the Constitution or a congressional statute allows him to do it. That is perhaps why Trump has not invoke emergency powers to build the wall–basic principles of American law suggest he lacks the authority to do it.”

Professor Schultz points out that there are several laws that prevent the president from acting alone to build the wall. Most specifically according to Schultz: “First, the 1974 Federal Budget Act constrains the ability of the president to spend congressionally-authorized money in ways contrary to what the law allows. Second, there is no evidence in the National Emergencies Act to suggest that it frees the president to disregard spending priorities mandated by Congress. Third, presidents can only spend money they have legal authority to spend and there is no law allowing for funds to be used for the wall.”

In addition, Schultz also argues there are other reasons to think that the National Emergencies Act may either be unconstitutional or fail to support Donald Trump. He argues that given that the law fails define what a national emergency is, a court may strike down the law as unconstitutionally vague. But equally important, the more Donald Trump changes his mind over whether there is an emergency, the less likely it is an emergency in any ordinary dictionary meaning of the term. “The longer Trump vacillates over whether there is an emergency at the border proves there is no emergency. His threat to invoke the National Emergencies Act to get Congress to act is like taking his bat and ball and going home because he is losing in negotiations,” according to Schultz.

David Schultz is a professor of political science at Hamline University. He has taught classes on American government and constitutional law for nearly 30 years. A three-time Fulbright scholar and winner of the Leslie A. Whittington national award for excellence in public affairs teaching, David Schultz is the author and editor of 35 books and 200 articles on American politics and law, including The Conservative Revolution of Antonin Scalia and his two-volume Constitutional Law in Contemporary America.

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