



The US Government Shutdown, the Congress and the White House

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The Democrats in the United States reclaimed their majority in the House of Representatives for the first time in eight years and elected Ms. Nancy Pelosi (D-CA) as the speaker of the house. As the first woman speaker to be re-elected to the position, she swore in the 116th Congress, which includes a record 102 women representatives and is one of the youngest and most racially mixed Houses in recent times.

The 2019-20 US Congress began its session with close to a quarter of the federal government in a shut-down, affecting 800,000 employees. The federal government shutdown on 22 December 2018, when the Democrats rejected the administration's demand for US\$ 5.7 billion to build a wall on the US-Mexico border.

President Trump had threatened a government shutdown before the November mid-term elections. He had urged voters to support Republican candidates to ensure 'strong' legislative action against 'weak borders' and illegal immigrants. After the mid-term elections, Ms. Pelosi and Senator Chuck Schumer (D. NY) met President Trump to work towards a solution on the spending bills and avert a shutdown over border spending. A similar meeting in mid January also ended in an impasse. The confrontation showed the division within the federal government.

In an effort to reopen the government, the House Democrats passed a two part package which included a bill to fund the Department of Homeland Security at its current levels until 08 February, providing US\$ 1.3 billion for border security measures. The second part funded the other federal agencies, including agriculture, interior, transportation, commerce and justice departments, until 30 September 2019¹. The two bills were not tabled by Senate Majority leader Mr. Mitch McConnell, (R-KY) as President Trump announced he would veto the legislative measure. On 19 January, the President proposed a plan granting provisional status to current

Deferred Action for Childhood Arrivals (DACA) and Temporary Protected Status (TPS) recipients for three years, in return for border funding. The proposal was rejected by the Democrats, who stated that the plan did not provide any long term solutions or a path to permanent legal status or citizenship.

Under the US Constitution's division of power between the three branches of the government, the Congress has the 'power of the purse' and needs to approve all financial bills. For a proposal to be accepted by the US Congress, it needs the support of 60 Senators and 218 Republicans. The Democrats control the House (235 to 198) where as the Republicans are in a majority in the Senate (53 to 45). The differences between the two parties, has meant that no proposal got the required support in the US Congress.

On 25 January, President Trump announced that he was signing a bill to reopen the government. However, he clarified "We really have no choice but to build a powerful wall or steel barrier. If we don't get a fair deal from Congress, the government will either shut down on February 15th, again, or I will use the powers afforded to me under the laws and the Constitution of the United States to address this emergency."² If the president is to declare a national emergency,³ it would allow the administration to circumvent the US Congress and appropriate the required funding for the wall from the Department of Defence budget.

Democrats have stated time and again that they will challenge the declaration in committee hearings and seek explanations from the administration on the nature of the emergency. The House Judiciary Committee would likely take the lead along with the Appropriations Committee and other committees that have jurisdiction over departments from which funding will be taken. If President Trump declared an emergency, Section Five of the National Emergencies Act 1976, gives the House of Representatives the right to repudiate it immediately, then pass their resolution to the Senate, which is explicitly required to conduct a floor vote within 15 days. Legal experts have stated the declaration will also be challenged in the court by the Democrats, as the armed forces under different provisions of the constitution are barred from executing domestic law, unless authorised by the US Congress. The courts would decide whether the border situation constituted an emergency justifying unilateral executive action.

Conclusion

The end to the 32 day shutdown comes as a temporary relief as the US Congress works to come up with a spending solution before 15 February. The President blamed the Democrats for the shutdown and the crisis at the border including the death of two children. The border wall was a central campaign promise of the Trump administration and as he prepares for the 2020 presidential elections, many believe that his unwillingness to compromise on the wall is to ensure his core supporters remain solidly behind him.

The shutdown and midterm elections have shown that there is a divide within the Republican Party .Some House and Senate Republicans, especially those from swing states (Maine, Iowa, North Carolina, Colorado), feel that repeated and prolonged shutdowns will affect results for the Senate and President Trump's re-election bid next year. The five-week federal

government shutdown took a significant economic toll, costing the United States economy US\$11 billion, with nearly a quarter of that total permanently lost, according to the Congressional Budget Office.⁴ Historically, American voters have elected presidents for a second term; however, there have also been exceptions. The midterm elections indicate that while President Trump remains popular, the Democrats are gaining ground. President Trump faces a confrontational House and possibly a divided Senate, along with angry people who blame him for the shutdown. He would have to compromise on some issues to ensure the rest of his agenda is fulfilled and to strengthen his nomination bid for 2020.

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Disclaimer: The views expressed are that of the Researcher and not of the Council.*

Endnotes:

¹ The US fiscal year is 01 October to 30 September of a given year.

² The Office of the Press Secretary, The White House, "Remarks by President Trump on the Government Shutdown," <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-government-shutdown/>, Accessed on 30 Jan. 2019.

³ The national emergency would be enacted under provisions of U.S. Code, Title 10, Subtitle A, Part IV, Chapter 169, Subchapter I, § 2808. The provisions states, "In the event of a declaration of war or the declaration by the President of a national emergency in accordance with the National Emergencies Act (50 U.S.C. 1601 et seq.) that requires use of the armed forces, the Secretary of Defense, without regard to any other provision of law, may undertake military construction projects, and may authorize the Secretaries of the military departments to undertake military construction projects, not otherwise authorized by law that are necessary to support such use of the armed forces...." Legal Information Institute, Cornell Law College, "10 U.S. Code § 2808 - Construction authority in the event of a declaration of war or national emergency," <https://www.law.cornell.edu/uscode/text/10/2808>, Accessed on 07 Jan. 2019.

⁴ Congressional Budget Office, "The Effects of the Partial Shutdown Ending in January 2019," <https://www.cbo.gov/system/files?file=2019-01/54937-PartialShutdownEffects.pdf>, Accessed on 30 Jan 2019.