



Written by [Joe Wolverton, II, J.D.](#) on February 6, 2018

\$1.5 Trillion on Infrastructure: Good Idea, but Constitutional?

In his address to Congress on January 30, President Donald Trump proposed a \$1.5 trillion infrastructure package.

The president said:

As we rebuild our industries, it is also time to rebuild our crumbling infrastructure.

America is a nation of builders. We built the Empire State Building in just 1 year — is it not a disgrace that it can now take 10 years just to get a permit approved for a simple road?

I am asking both parties to come together to give us the safe, fast, reliable, and modern infrastructure our economy needs and our people deserve.

Tonight, I am calling on the Congress to produce a bill that generates at least \$1.5 trillion for the new infrastructure investment we need.



Along with the federal outlay, the president suggested that state and local governments be called upon to contribute to the building and repair project, too.

Not unexpectedly, most commentators reacted positively to the president's announcement. Even the libertarian-leaning Reason blog put a positive spin on the proposal. "Bob Poole, director of transportation policy at the Reason Foundation (the nonprofit that publishes this website) had a "fairly positive" reaction to the document," Reason reported.

Over at the *National Review*, Trump's speech was declared "stellar," and while the self-described "conservative" magazine admitted that such a huge expenditure could be seen by some as a "big-government blemish" on the president's record, the article went on to offer a variety of suggestions for how to spend the \$1.5 trillion.

In fact, it was nearly impossible to find anyone who recognized the road repair bill for what it is: unconstitutional. Over at the Mises Institute, Christopher Westley did point out that the United States is not exactly ignoring infrastructure. "The fact is that federal, state, and local spending on transportation infrastructure is well into the tens of billions each month,"

Westley writes, adding that "monthly public spending on infrastructure in the US exceeds the annual GDP of Paraguay. Annually, we spend more on infrastructure than the GDP of Hong Kong."

Perhaps it is so hard pointing to the unconstitutionality of such expenditures because people generally — even those who profess to be in favor of free-markets and limited government — believe fixing the country's "crumbling" infrastructure is a good idea.

It seems that nearly everyone wants to see the president's promised "gleaming new roads, bridges, highways, railways, and waterways."



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Some, maybe, give President Trump credit for coming through on a campaign promise. Good idea and fulfilled promise though it may be, there are a couple of big constitutional problems for President Trump and for anyone supporting the massive infrastructure bill.

First, there is no federal authority to undertake such a construction. Article I, Section 8 is the list of congressional power and one cannot find “maintain the nation’s infrastructure” among that enumeration.

Once upon a time, there was a president who took the concept of constitutionally limited government and enumerated powers seriously, seriously enough to veto a spending bill that sounded very much like the one the president is soon to propose to Congress.

On March 3, 1817, President James Madison informed the House of Representatives that he had to return the bill unsigned. The measure called for Congress to pay “for constructing roads and canals, and improving the navigation of water courses.”

Such a project was not a power granted to Congress, Madison informed the legislature.

Madison wrote:

The legislative powers vested in Congress are specified and enumerated in the eighth section of the first article of the Constitution, and it does not appear that the power proposed to be exercised by the bill is among the enumerated powers, or that it falls by any just interpretation with the power to make laws necessary and proper for carrying into execution those or other powers vested by the Constitution in the Government of the United States.

Next, the Father of the Constitution explained in his veto message that the bill could not be supported by the claim of promoting “the general welfare.”

Regarding that claim, Madison declared:

To refer the power in question to the clause “to provide for common defense and general welfare” would be contrary to the established and consistent rules of interpretation, as rendering the special and careful enumeration of powers which follow the clause nugatory and improper. Such a view of the Constitution would have the effect of giving to Congress a general power of legislation instead of the defined and limited one hitherto understood to belong to them, the terms “common defense and general welfare” embracing every object and act within the purview of a legislative trust.

Madison warned that if such a bill were to be enacted, it “would have the effect of excluding the judicial authority of the United States from its participation in guarding the boundary between the legislative powers of the General and the State Governments.”

Finally, President Madison admitted that the improvement of the nation’s nascent infrastructure was a very good idea, one that would improve the prosperity of the country, and one that Congress could likely handle.

But none of that mattered. Madison closed with constitutional clarity:

I am not unaware of the great importance of roads and canals and the improved navigation of water courses, and that a power in the National Legislature to provide for them might be exercised with signal advantage to the general prosperity. But seeing that such a power is not expressly given by the Constitution, and believing that it can not be deduced from any part of it without an inadmissible latitude of construction and reliance on insufficient precedents; believing also that the



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permanent success of the Constitution depends on a definite partition of powers between the General and the State Governments, and that no adequate landmarks would be left by the constructive extension of the powers of Congress as proposed in the bill, I have no option but to withhold my signature from it.

Article I, Section 8 has not been amended to permit Congress to undertake the spending of taxpayer funds on the type of infrastructure project proposed by President Trump. To allow such an overhaul of the country's infrastructure would be to nullify the concept of enumerated powers, creating a national legislature without limits.

What is certain, though, is that on January 20, 2017, Donald Trump swore an oath to "preserve, protect, and defend the Constitution of the United States."

Suggesting spending \$1.5 trillion on an infrastructure bill may be the fulfillment of a campaign promise, but it would also be a breaking of his oath of office.

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