



Written by [Bob Adelman](#) on June 4, 2019

Trump Judge Rules House Can't Stop Him From Building Wall Using Other Funds

As a candidate for president Donald Trump promised that, if elected, he would nominate judges and justices on the basis of their commitment to “original intent” of the Founders when they crafted the U.S. Constitution in 1787. One of those judges used [the words of our Founders](#) in a ruling on the contentious issue of President Trump’s “beautiful wall.” Trevor McFadden, who served previously as a deputy assistant attorney general in the Justice Department, was nominated to the District Court for the District of Columbia in June 2017 and took office in October.



The “beautiful wall” issue came to his attention after House Democrats sued Trump and his administration, claiming that he broke the law by threatening to move monies the House had already approved for other purposes toward building the wall.

McFadden disagreed in his ruling issued on June 3:

Few ideas are more central to the American political tradition than the doctrine of separation of powers. Our Founders emerged from the Revolution determined to establish a government incapable of repeating the tyranny from which the Thirteen Colonies escaped.

They did so by splitting power across three branches of the federal government and by providing each the tools required to preserve control over its functions. The “great security against a gradual concentration of the several powers in the same department,” James Madison explained, “consists in giving to those who administer each department the necessary constitutional means and personal motives to resist encroachments of the others.” *The Federalist*, No. 51.

He turned down the request from the House Democrats because his court, and courts in general, shouldn’t get involved in what he called “turf wars,” explaining:

The U.S. House ... seeks to enjoin the ... Administration ... from spending certain funds to build a wall along our southern border. The House argues that this expenditure would violate the Appropriations Clause of the Constitution and usurp Congress’ authority.

Rather than defend Trump’s actions, the administration’s attorneys claimed that the House had no standing — i.e., proof of injury — to bring the suit. McFadden agreed with them:

The “complete independence” of the Judiciary is “peculiarly essential” under our Constitutional structure, and this independence requires that the courts “take no active resolution whatever” in political fights between the other branches. See *The Federalist*, No. 78 (Alexander Hamilton).

And while the Constitution bestows upon Members of the House many powers, it does not grant



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them standing to hale the Executive Branch into court claiming a dilution of Congress's legislative authority. The Court therefore lacks jurisdiction to hear the House's claims and will deny its motion.

The speaker of the House, Representative Nancy Pelosi (D-Calif.) is now considering whether to file an appeal.

The lawsuit had its genesis back in March when Secretary of Defense Patrick Shanahan notified Congress that his agency was about to shift funds intended for other purposes — \$3.6 billion from other construction projects, \$2.5 billion from other defense programs, and \$600 million collected in enforcement and forfeiture actions by customs and treasury agencies — to start building the wall along the Yuma and El Paso, Texas, sections of the U.S.-Mexico border.

In early April the Democrat-controlled House, determined to thwart Trump's building of his "beautiful wall," filed suit. Hearings were held in May, and McFadden's decision was issued on Monday. CNN called it a "setback" to House Democrats, effectively "killing" their effort to prevent Trump from spending previously allocated funds for his wall.

A spokesman for the Department of Justice praised McFadden's decision:

The Court rightly ruled that the House of Representatives cannot ask the judiciary to take its side in political disputes and cannot use federal courts to accomplish through litigation what it cannot achieve using the tools the Constitution gives to Congress.

But then he added, "The Department looks forward to continuing to defend the Administration's lawful actions to address the crisis at the southern border."

In other words this is just a skirmish in the seemingly never-ending war against Trump by Democrats refusing to allow him a victory of any type over the wall. That war continues thanks to a ruling on May 24 by an Obama-appointed judge in California, Haywood Gilliam. He ruled against the Trump administration and blocked projects already slated for immediate construction, holding that Trump's shifting of funds violates the separation of powers doctrine.

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