

Directions: Read the article. Find Pros and Cons to building a border wall. Use P=Pro and C=Con. Put a ★ next to data or evidence. At the end of the article create a T-chart listing 5 Pros and 5 Cons to building a border wall. Write a sentence about a conclusion you can make from this list. Use this article, *Dividing Lines* (the parts you chose), and information from the videos shown in class to find your list of Positives and Negatives to building a wall.

1 **BATTLE OVER THE BORDER WALL –**

2 What you need to know about the legal showdown over the president’s national 3 emergency declaration

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5 By PATRICIA SMITH – *The New York Times-Upfront Magazine, April 1, 2019*
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7 On February 15, President Trump declared a national emergency to fund the construction of a 1,
8 000-mile wall on the border with Mexico after Congress provided money for only a sliver of the
9 project. The announcement came as the president signed a spending deal negotiated by Democrats
10 and Republicans in Congress that included \$1.375 billion for border fencing, but not the \$5.7 billion
11 Trump had been demanding for construction of a much longer wall. The agreement headed off what
12 would have been the second shutdown of the federal government in the space of a month over the
13 issue. But Trump’s declaration prompted lawsuits that set up a constitutional showdown over the
14 separation of powers and the president’s authority. Here’s what you need to know to understand the
15 battle over the emergency declaration.

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17 **What’s the conflict about?** - Since December, Trump has been asking for \$5.7 billion to build a
18 wall along the southern border. About 650 miles of the 2,000-mile-long border between the U.S.
19 and Mexico already have some kind of barrier. Building a wall along the entire border was a key
20 campaign promise-something Trump said would stop the flow of undocumented immigrants and
21 illegal drugs into the U.S.

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23 Trump’s insistence on billions for the wall after Congress refused to allocate it led to a government
24 shutdown that began in late December and lasted a record 35 days, forcing some 800,000 federal
25 employees to go without their paychecks. In response to Trump’s emergency declaration, 16 states,
26 including California and New York, filed a lawsuit arguing that the president doesn’t have the
27 authority to divert funds for construction a wall along the Mexican border because Congress controls
28 federal spending.

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30 **What’s a national emergency?** - Congress has enacted laws that permit the president to take steps
31 that would normally be forbidden by law. To do so, a national emergency must be declared. The idea
32 is to allow the executive branch to move quickly in emergency circumstances. The National
33 Emergencies Act of 1976 gives the president broad authority to decide whether an emergency exists.
34 Presidents have used this law to declare emergencies about five dozen times. But most of those cases
35 dealt with foreign crises. And they’ve involved freezing assets or blocking trade or exports. Most
36 haven’t been used to redirect money without congressional authorization.

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38 White House officials cite two times that such emergency declarations were used by presidents to
39 spend money without legislative approval. The first was by President George H.W. Bush during the
40 run-up to the Persian Gulf War (1990-91). The second time was by President George W. Bush in

41 2001 after the 9/11 terrorist attacks. Legal experts have pointed to several statutes that permit the
42 executive branch to redirect military construction funds in an emergency. One such law, for
43 example, permits the secretary of defense to begin military construction projects “not otherwise
44 authorized by law” that support the armed forces.

45 **Is there really an emergency at the border?** - That’s the crux of President Trump’s argument.
46 “We’re talking about an invasion of our country,” Trump said when he announced the emergency
47 declaration, “with drugs, with human traffickers, with all types of criminals and gangs.”

48 Critics argue that the facts don’t support that. The number of people crossing the border illegally has
49 decreased. In fact, it’s far lower than it was in the late 1990s and early 2000s, according to official
50 government statistics. The relatively new and growing phenomenon of caravans of Central American
51 migrants consists largely of families who present themselves to border officials. These migrants
52 request asylum, rather than trying to elude authorities. Thousands of these Central American families
53 have been apprehended in recent months. Critics say a wall would have little effect on the flow of
54 illegal drugs into the country. U.S. Customs and Border Protection says illegal drugs are mostly
55 smuggled through official ports of entry.

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57 President Trump may also have undercut his own argument for declaring an emergency. He told
58 reporters at the White House, “I didn’t need to do this, but I’d rather do it much faster. I just want to
59 get it done faster, that’s all.”

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61 “Probably the best evidence [for overturning the declaration] is the president’s own words,” says
62 California Attorney General Xavier Becerra.

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64 **Why is this showdown a big deal?** - President Trump continues to argue that he’s well within his
65 rights to declare an emergency. Still, constitutional scholars and many lawmakers are alarmed that
66 his decision sets a dangerous new precedent. The Founders deliberately gave Congress, not the
67 president, the authority to make laws and to allocate money. It’s called the “power of the purse.”
68 What will prevent future presidents, they argue, from declaring emergencies if they can’t get
69 Congress to approve whatever project they want?

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71 “It sets a precedent that a president can, without regard to an actual existence of an emergency, use
72 this tool to evade the normal democratic process and fund projects on his own,” says William Banks,
73 a Syracuse University law professor.

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75 **What happens now?** - There’s a high likelihood that more lawsuits will soon be filed against
76 President Trump. With court actions pending, a wall won’t go up anytime soon. It’s not clear how
77 the legal questions will be resolved. The courts are often reluctant to substitute their own judgment
78 for the president’s when it comes to security matters. In other words, the courts may not even
79 address the question of whether the facts warrant an emergency declaration. They might instead
80 prefer to defer to the president on a national security issue. The courts could end up focusing on
81 whether states can show they’re being harmed by the president’s diversion of funds to build the wall.

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83 In addition to the uncertainty about how the courts will rule is the possibility that Congress could get
84 fed up with presidents using emergency powers and vote to restrict them. “The risk the president
85 runs is that Congress will take away much, if not most, of the discretion it’s given to the president,”

86 says Stephen Vladeck, a law professor at the University of Texas, Austin. “And then the concern is
87 that Congress could hamstring a future president from having all the tools he or she might need to
88 react to a future emergency. So a short-term win for the president could become a long-term loss for
89 the presidency.”

BUILDING A BORDER WALL	
PROS (positives)	CONS (Negatives)

Concluding sentence: