

April 19, 2022

Dear Senator:

As a diverse group of organizations working to safeguard and strengthen our democratic institutions, we write to urge you to support including National Emergencies Act (NEA) reform in this year's National Defense Authorization Act (NDAA). Specifically, we advocate inclusion of the text of the ARTICLE ONE Act (S. 764) as reported out of the Homeland Security and Government Affairs Committee on a bipartisan 11-2 vote in November 2019 – legislation that has served as the core of NEA reform provisions in several recent major reform packages.

The ARTICLE ONE Act contains vital, commonsense reforms to the NEA. These changes are critical to preventing abuses of emergency powers that could be disastrous for our democracy, irrespective of who occupies the White House. In addition to being harmful to our constitutional order, such abuses of emergency power can undermine basic liberties, particularly those of minorities and other vulnerable communities.

These reforms are as necessary today as when they were first proposed in 2019. Abuse of emergency powers has happened in the recent past, and it will happen again in the future. A president who is inclined to abuse these powers clearly would not sign emergency powers reform into law. The time for reform is precisely when there is a president in office who understands the importance of shoring up safeguards for democracy.

Indeed, the reforms at the core of ARTICLE ONE Act have become the basis of multiple NEA reform efforts in the past year and a half. They were included in the Protecting Our Democracy Act, which passed the House in December 2021 and was endorsed by President Biden. They were included in the Congressional Power of the Purse Act in 2020. And they were included in the National Security Powers Act in the Senate and the National Security Reform and Accountability Act in the House, bipartisan packages introduced in 2021. This framework has thus been subject to debate and legislative process now in both chambers.

Absent reform, presidential abuse of the NEA is a matter of “when” rather than “if.” The law gives the president nearly unfettered discretion to declare a national emergency. That declaration unlocks more than 120 statutory authorities, including emergency powers that a president could rely on to shut down communications facilities, seize private property, and control domestic transportation. As originally enacted in 1976, Congress could terminate states of emergency at any time using a “legislative veto” (a concurrent resolution that did not require the president’s signature to become law). However, in 1983, the Supreme Court ruled that this kind of legislative veto is unconstitutional. Today, to terminate an emergency, Congress must effectively muster a supermajority to override the president’s veto—a near impossibility in the current political environment.

The NEA also requires presidents to renew emergency declarations yearly, reflecting Congress's belief that states of emergency should not linger any longer than necessary. But serial renewals by presidents acting unilaterally have become the rule rather than the exception. Today, 40 emergency declarations are in effect; some have been in place for decades.

The ARTICLE ONE Act would establish a necessary, meaningful check on the president's use of emergency powers, while maintaining flexibility for the president when needed most – in the immediate aftermath of a crisis. The bill would create a 30-day window for Congressional approval of any declared national emergency. During that period, the president would have full access to the emergency powers triggered by the declaration. The vote of approval would take place under expedited procedures that would allow any member to force a vote and would prohibit filibustering in the Senate, thus ensuring that the result would reflect the will of the majority of Congress. If Congress did not affirmatively vote to approve an emergency declaration within 30 days of its issuance, it would automatically terminate. If approved, the emergency declaration could last up to a year, after which the president could seek Congressional approval to renew annually. The bill would also significantly enhance reporting requirements in order to keep Congress better informed about how the president uses emergency powers.

To ensure that these reforms would not unduly disrupt existing emergency measures, the bill would allow emergency declarations that are currently in effect to remain in effect until the end of their current one-year term before requiring Congressional approval. Furthermore, the bill exempts emergency declarations that rely solely on the International Emergency Economic Powers Act (IEEPA), the source of authority for multiple foreign economic sanctions regimes, including those currently levied against Russia.

With the ARTICLE ONE Act, the Senate has the opportunity to advance the most significant recalibration of the balance of power between the president and Congress in four decades, and to do so in a bipartisan manner. We urge you to support this legislation's inclusion in the NDAA.

Sincerely,

American Civil Liberties Union
Brennan Center for Justice
CommonDefense.us
Defending Rights & Dissent
Democracy 21
Due Process Institute
Fix Democracy First
Government Accountability Project

Government Information Watch
Niskanen Center
Open The Government
Project On Government Oversight
Protect Democracy
Public Citizen
Stand Up America
Surveillance Technology Oversight Project