

October 10, 2024

The Honorable Mike Johnson
Speaker
U.S. House of Representatives

The Honorable Hakeem Jeffries
Minority Leader
U.S. House of Representatives

The Honorable Charles Schumer
Majority Leader
U.S. Senate

The Honorable Mitch McConnell
Minority Leader
U.S. Senate

Dear Speaker Johnson, Leader Schumer, Leader Jeffries, and Leader McConnell:

The undersigned cross-ideological organizations, which work to safeguard and strengthen our democratic institutions, write to urge you to enact the National Emergencies Act (NEA) reform legislation that recently passed out of committee in both the House and Senate with overwhelming bipartisan support. This reform legislation should be enacted in this Congress, either as a stand-alone or as part of broader legislation, such as the National Defense Authorization Act (NDAA) or a government funding bill. Such reform is critical to preventing future abuses of emergency authorities and could be the most substantial rebalancing of power between the executive branch and Congress since the 1970s.

For the past 100 years, U.S. presidents have been able to access extraordinary powers by virtue of declaring a national emergency — including powers to shut down communications facilities, seize property, organize and control the means of production, assign military forces abroad, and restrict travel. Until the 1970s, presidents were able to invoke such emergency powers with essentially no congressional oversight and no limit on how long a state of emergency could last.

Realizing the danger in this situation, Congress enacted the NEA to bolster its own role and to create protections against the abuse of emergency powers. The law contained three primary safeguards: (1) states of emergency would expire after a year unless presidents renewed them; (2) 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); and (3) Congress was required to meet every six months while a state of emergency was in effect to consider a vote on whether to end it. The law also sought to facilitate congressional oversight by requiring presidents to report every six months on expenditures made in connection with the use of emergency powers.

The law, however, has not worked as Congress intended. The one-year expiration period, which was supposed to be the default, has become the exception. There are more than 40 active states of emergency in place today. Additionally, in 1983, the Supreme Court ruled that the legislative veto is unconstitutional. To terminate an emergency, Congress must instead pass a joint resolution, which becomes law only if the president signs it — or if Congress can muster a supermajority to override the president’s veto. For over forty years, Congress simply ignored the requirement to consider a vote on existing emergencies every six months. And presidents have similarly ignored the requirement to report to Congress on emergency expenditures.

In the absence of meaningful statutory safeguards, we must instead rely on presidents to exercise self-restraint in the use of these incredibly potent powers, which is far from the meaningful check on executive authority the NEA originally contemplated.

Fortunately, there is a way forward for Congress to recalibrate the balance of powers: the NEA reforms contained in H.R. 3988 (the ARTICLE ONE Act), as amended in committee, and S. 4373 (the REPUBLIC Act), as amended in committee. Under these bills:

- A presidentially declared national emergency will automatically expire after 30 days unless Congress affirmatively votes to extend it, using expedited procedures that will ensure timely action and prevent obstructionism. If Congress does not extend the national emergency, the president may not, during the remainder of their term in office, declare a subsequent national emergency with respect to the same circumstances.
- A national emergency declared by the president and approved by Congress may remain in place for up to one year; if the president wishes to renew the declaration at that time, Congress must approve the renewal using expedited procedures.
- With each proclamation declaring or renewing a national emergency, the president must provide a report to Congress that includes a description of the circumstances necessitating the declaration, an estimated duration of the emergency, a summary of actions the president intends to take, and for renewals, a summary of action taken in the past year.
- The president also must provide a report every six months on the status of the emergency and actions the president has taken to address it.
- Existing national emergencies will be subject to the same renewal requirements outlined above.
- Emergency declarations that rely solely on the International Emergency Economic Powers Act (IEEPA) are exempted, as IEEPA presents unique considerations that should be addressed through separate legislation.

These simple, commonsense reforms will shore up Congress's role as a check against presidential overreach while retaining the president's flexibility in the immediate aftermath of an emergency.

On September 18th of this year, the ARTICLE ONE Act and the REPUBLIC Act were considered in the House Transportation and Infrastructure (T&I) Committee and the Senate Homeland Security and Governmental Affairs Committee (HSGAC), respectively. Although the NEA reform provisions of the two bills originally differed somewhat, an amendment in the nature of a substitute was offered in both markups, and the NEA reform provisions in those two amendments were identical. The House T&I committee passed the ARTICLE ONE Act, as thus amended, by unanimous voice vote, while HSGAC passed the REPUBLIC Act, as thus amended, by a vote of 13-1.

In short, Congress has a historic 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 broadly bipartisan manner. We urge you to include this legislation in the NDAA or a government funding bill or otherwise ensure its passage in this Congress.

Sincerely,

American Civil Liberties Union
Advocacy for Principled Action in Government
Americans for Prosperity
Bend the Arc: Jewish Action
Brennan Center for Justice
Center for Democracy & Technology
Center for Security, Race and Rights
Citizens for Responsibility and Ethics in Washington (CREW)
Clean Elections Texas
Common Cause
Defending Rights & Dissent
Democracy 21
Digital Democracy Project
Due Process Institute
Government Accountability Project
Government Information Watch
Independent Center
National Taxpayers Union
Niskanen Center
Oregonizers
Organization for Identity & Cultural Development (OICD.net)
Project On Government Oversight
Protect Democracy
Public Citizen
R Street Institute
Rainey Center Freedom Project
Restore the Fourth
Secure Elections Network
Stand Up America
Surveillance Technology Oversight Project
Taxpayers for Common Sense
Taxpayers Protection Alliance
TechFreedom
Third Way
Win Without War