

June 15, 2022

Dear Senator:

As a diverse group of organizations working to safeguard and strengthen our democratic institutions, we write to urge you to vote for an amendment that we understand will be offered during the markup of the FY 2023 National Defense Authorization Act (NDAA) that would implement vital, commonsense reforms to the National Emergencies Act (NEA).

The amendment replicates 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. That legislation then served as the basis for NEA reform provisions in several recent major reform packages, including the Protecting Our Democracy Act, which passed the House in December 2021 and was endorsed by President Biden. Fifty sitting senators—30 Democrats and 20 Republicans—have cosponsored legislation that would reform the NEA as provided in these bills. The broad bipartisan consensus on the need for this reform was further reflected in a recent hearing of the House Judiciary Committee’s Constitution Subcommittee.

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 As originally enacted in 1976, Congress could terminate states of emergency at any time using a “legislative veto” – a concurrent resolution that did not require the president’s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. However, in 1983, the Supreme Court ruled that legislative vetoes are 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, 41 emergency declarations are in effect; some have been in place for decades.

The amendment 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. It would require presidential emergency declarations to expire after 30 days unless approved by Congress, using expedited procedures that would ensure timely action. If approved, emergency declarations could last up to a year, after which the president could seek Congressional approval to renew annually. The amendment 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 amendment 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 amendment 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 this amendment, 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 vote for this amendment.

Sincerely,

Advocacy for Principled Action in
Government
American Civil Liberties Union
Bend the Arc: Jewish Action
Brennan Center for Justice at NYU School
of Law
Broward for Progress
Center for Security, Race and Rights
Citizens for Responsibility and Ethics in
Washington (CREW)
Clean Elections Texas
Common Cause
CommonDefense.us
Defending Rights & Dissent
DemCast USA
Democracy 21
Due Process Institute
The Digital Democracy Project
Fix Democracy First
Free Speech for People
The Frontline
Government Accountability Project

Government Information Watch
Indivisible Santa Fe
More Perfect Democracy
Niskanen Center
Open The Government
Oregonizers
Project On Government Oversight
Protect Democracy
Public Citizen
Public Wise
R Street Institute
Restore the Fourth
Secure Elections Network
Stand Up America
Surveillance Technology Oversight Project
TechFreedom
20/20 Vision DC
Voto Latino
Win Without War
The Workers Circle
X Lab