

December 2, 2022

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives

The Honorable Kevin McCarthy
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 Pelosi, Leader Schumer, Leader McCarthy, and Leader McConnell:

As a diverse group of organizations working to safeguard and strengthen our democratic institutions, we write to urge you to enact National Emergencies Act (NEA) reform during this Congress, either as a stand-alone or as part of broader legislation, such as the omnibus spending bill that is reportedly under consideration.

NEA reform has been considered and advanced in both chambers. In December of 2021, the House passed the Protecting Our Democracy Act (PODA), which includes a set of provisions to reform the NEA. These provisions were largely drawn from Sen. Mike Lee's (R-UT) ARTICLE ONE Act as reported out of the Senate Homeland Security and Governmental Affairs Committee (HSGAC) in 2019.

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 As originally enacted in 1976, Congress could terminate states of emergency at any time using a "legislative veto" — a concurrent resolution that did not require the president's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, 42 emergency declarations are in effect; some have been in place for decades.

The NEA reform provisions shared by PODA and the HSGAC-passed version of 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. Under these provisions, presidential emergency declarations would expire after approximately one month (20 legislative days under PODA and 30 calendar days under the ARTICLE ONE Act) unless approved by Congress, using expedited procedures that would ensure timely action. If approved, emergency declarations could last up to a year, with subsequent year-long renewals by the president also requiring expedited congressional

approval. Existing reporting requirements would be significantly enhanced 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, emergency declarations that are currently in effect would be allowed to remain in effect until the end of their current one-year term before Congressional approval would be required. Furthermore, 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 — would be exempted.

There is extraordinarily broad bipartisan support for this set of reforms. The ARTICLE ONE Act, which was introduced by Senator Mike Lee (R-UT) and had 18 Republican cosponsors, passed out of HSGAC on an 11-2 vote with every Democratic member voting in favor. Six Democrats and eight Republicans joined a letter urging Senate leadership to hold a floor vote on the bill. The core reforms in the ARTICLE ONE Act were then incorporated into two major Democratic reform packages, PODA and the Congressional Power of the Purse Act. They also appear in the bipartisan National Security Powers Act in the Senate and National Security Reforms and Accountability Act in the House. In all, 30 Senate Democrats and 20 Senate Republicans have cosponsored legislation that includes NEA reform. In the House, an amendment to this year's NDAA that would have implemented PODA's NEA reform provisions was sponsored by Representatives Peter DeFazio (D-OR), Chip Roy (R-TX), Adam Schiff (D-CA), Peter Meijer (R-MI), Steve Cohen (D-TN), Beth Van Duyne (R-TX), and Veronica Escobar (D-TX).

In short, Congress 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. The undersigned organizations would strongly support either the NEA reform provisions of PODA, as included in the [DeFazio/Roy amendment](#) to the House NDAA, or the HSGAC-passed version of the ARTICLE ONE Act, versions of which were incorporated into amendments to the Senate NDAA filed by Sens. Mike Lee (R-UT) ([SA 6013 to SA 5499 to H.R. 7900](#)) and Richard Blumenthal (D-CT). The shared reforms in these amendments would significantly rein in the potential for presidential abuse of emergency powers. We urge you to include them in the omnibus or otherwise ensure their passage in this Congress.

Sincerely,

American Civil Liberties Union
 Brennan Center for Justice at NYU School
 of Law
 Citizens for Responsibility and Ethics in
 Washington (CREW)
 Common Cause
 Due Process Institute
 FreedomWorks
 National Taxpayers Union
 Niskanen Center

Project On Government
 Oversight
 Protect Democracy
 Public Citizen
 R Street Institute
 Stand Up America
 Taxpayers for Common Sense
 Taxpayers Protection Alliance
 TechFreedom
 Third Way
 Win Without War