

July 17, 2023

The Honorable Sam Graves
Chairman, House Committee on Transportation and Infrastructure

The Honorable Rick Larsen
Ranking Member, House Committee on Transportation and Infrastructure

The Honorable Gary Peters
Chairman, Senate Committee on Homeland Security and Governmental Affairs

The Honorable Rand Paul
Ranking Member, Senate Committee on Homeland Security and Governmental Affairs

Dear Representatives Graves and Larsen and Senators Peters and Paul:

The undersigned 31 cross-ideological organizations, which work to safeguard and strengthen our democratic institutions, write to urge the House Committee on Transportation and Infrastructure and the Senate Committee on Homeland Security and Governmental Affairs to advance the bipartisan and bicameral ARTICLE ONE Act (H.R. 3988/S. 1912), which would reform the National Emergencies Act of 1976 (NEA). 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 that were never approved by Congress. 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 his 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 ARTICLE ONE Act. The bill would enact the following reforms:

- Every 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 must be redeclared and reapproved by Congress one year after the original declaration.
- 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, and 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.

On May 24, 2023, the House Transportation and Infrastructure Subcommittee on Economic Development, Public Buildings, and Emergency Management held a hearing, “Never Ending Emergencies — An Examination of the National Emergencies Act,” where expert witnesses unanimously testified that the legal framework governing presidential emergency powers was in [urgent need of reform](#). A similar hearing was

held in 2022 by the House Judiciary Subcommittee on the Constitution. The ARTICLE ONE Act was introduced by Senators Lee (R-UT) and Blumenthal (D-CT) and Representatives Roy (R-TX), Cohen (D-TN), Perry (R-PA), and Titus (D-NV) on June 9, 2023, and enjoys an unusually broad range of bipartisan support in both the House and Senate. A previous version of the legislation, for instance, was reported out of the Senate Homeland Security and Government Affairs Committee in 2019 by a vote of [11-2](#).

In short, this is a simple, commonsense reform that 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. This broadly supported measure is critical to the health of our democracy, and we urge you to hold a markup and advance the bill as soon as possible.

Sincerely,

CC: Chairman Cole and Ranking Member McGovern, House Rules Committee

ACLU
Advocacy for Principled Action in
Government
Americans for Prosperity
Bend the Arc: Jewish Action
Brennan Center for Justice
Center for Security, Race and Rights
Citizens for Responsibility and Ethics in
Washington (CREW)
Clean Elections Texas
Common Cause
Defending Rights & Dissent
Democracy 21
Due Process Institute
Freedom Works
Government Information Watch
National Taxpayers Union

Niskanen Center
Oregonizers
Organization for Identity & Cultural
Development (OICD.net)
People Power United
Project On Government Oversight
Protect Democracy
Public Citizen
R Street Institute
Secure Elections Network
Stand Up America
Surveillance Technology Oversight
Project
Taxpayers for Common Sense
Taxpayers Protection Alliance
TechFreedom
The Digital Democracy Project
Third Way