



May 5, 2021

The Honorable Mike Lee
361-A Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Lee:

On behalf of National Taxpayers Union, the nation's oldest taxpayer advocacy organization, I write to thank you for re-introducing the ARTICLE ONE Act. This legislation will help ensure that the executive branch does not abuse the significant powers afforded it under the National Emergencies Act (NEA), by giving Congress a more affirmative say over when, how, and how long a President can declare a national emergency.

The NEA gives the president and their subordinates considerable authority to marshal federal resources—and consequently, taxpayer dollars—toward particular causes or efforts.¹ This includes the ability to reprogram or transfer federal funds that Congress appropriated for different purposes.² As a watchdog for taxpayers, it is our firm belief that these flexibilities violate the spirit of the Congressional power over the nation's purse strings and should therefore be used rarely and under narrow circumstances. Unfortunately, that is quite often not the case.

As of January 2019, 31 of the 58 national emergencies that had been declared by presidents since 1976 were still in effect.³ Policymakers in both parties are guilty of having abused or considered abuse of NEA authorities in recent years. Former President Trump drew the opposition of both Republicans and Democrats in Congress in 2019 when he declared a national emergency at the U.S.-Mexico border, and used NEA authorities to reprogram funds that Congress had appropriated for other purposes to building a border fence.⁴ In January, Senate Majority Leader Chuck Schumer (D-NY) told President Biden to use NEA authorities to address climate change, saying that Biden “can do many, many things under the emergency powers of the president ... that he could do without legislation.”⁵

¹ 50 U.S.C. Ch. 34.

² 31 U.S.C. §2293.

³ Heath, Kendall. “Here's a list of the 31 national emergencies that have been in effect for years.” *ABC News*, January 10, 2019. Retrieved from: <https://abcnews.go.com/Politics/list-31-national-emergencies-effect-years/story?id=60294693> (Accessed February 23, 2021.)

⁴ Pramuk, Jacob. “Senate votes again to block Trump's national emergency over the border but fails to get veto-proof majority.” *CNBC*, September 25, 2019. Retrieved from: <https://www.cnbc.com/2019/09/25/senate-votes-to-block-trump-national-emergency-over-border-wall.html> (Accessed February 23, 2021.)

⁵ Geman, Ben. “Schumer suggests Biden could use emergency powers for climate policy.” *Axios*, January 26, 2021. Retrieved from:

Regardless of policymakers' preferred proposals for addressing U.S.-Mexico border issues or climate change, all lawmakers should be disturbed by the recent abuses (or proposed abuses) of national emergency authorities. Expansive executive powers intended for emergencies are no substitute for the hard and often frustrating work of legislating. Your legislation, the ARTICLE ONE Act, would help rein in presidential authority under the NEA while still giving the President the flexibility necessary to support communities undergoing acute and ongoing crises.

The legislation would help Congress reclaim its primacy over federal tax and spending matters by requiring Congress to *affirm* the continuation of a presidentially declared national emergency, rather than just giving Congress the power to *block* a national emergency declaration. If Congress cannot affirm a President's emergency declaration, the emergency and the extraordinary presidential powers that accompany it would expire within 30 days. Importantly, the ARTICLE ONE Act would also give lawmakers the power to modify the authorities a President proposes to use under a national emergency declaration, without terminating the emergency itself. This will help policymakers avoid 'all-or-nothing' propositions over complex and sometimes-legitimate emergency declarations.

In short, the ARTICLE ONE Act is a positive step forward for NEA reform, and will help balance the separation of powers between the legislative and executive branches. For too long Congress has abdicated its Article I authority to the President, and your legislation can be part of a positive trend in the other direction. We look forward to working with you as the ARTICLE ONE Act proceeds through Congress.

Sincerely,

Andrew Lautz
Director of Federal Policy