

July 8, 2022

To Members of Congress:

On behalf of the undersigned organizations, advocates for fiscal responsibility and limited government, we write to underscore our support for efforts to reform the National Emergencies Act (NEA) as part of the FY 2023 National Defense Authorization Act (NDAA).

The NEA has been widely used – and occasionally abused – by presidents of both parties since former President Gerald Ford signed the National Emergencies Act into law in 1976.<sup>1</sup> Presidents have declared 75 national emergencies since President Carter issued the first NEA declaration in 1979, and more than half (41 total) remain in effect today.<sup>2</sup> The law has been used several times on matters intimately related to national defense. Under current law, there are no substantive criteria that need to be met for presidents to declare national emergencies, and the president may renew the declaration indefinitely. The only way for Congress to terminate an emergency declaration is to pass a law, which in all likelihood would require a supermajority to override the president’s veto.

NEA declarations afford presidents a wide variety of potential emergency powers. In fact, the Congressional Research Service has identified “117 sections of the U.S. Code potentially activated by a presidential declaration of a national emergency,” including several that could materially affect U.S. national security, government spending, or even private sector activity.<sup>3</sup> For instance, there are laws allowing the executive branch to detail members of the U.S. armed forces to any nation;<sup>4</sup> to restrict various types of exports, including crude oil<sup>5</sup> and agriculture products;<sup>6</sup> to control domestic transportation;<sup>7</sup> and to suspend statutory wage-rate requirements for public contracts.<sup>8</sup> Some Congressional leaders have even urged President Biden to declare a national emergency on climate change, in order to unlock emergency powers afforded by an NEA declaration.<sup>9</sup>

While true emergencies may justify the use of emergency powers, there is a significant risk that the NEA could become a substitute for rigorous, regular order in Congress, deployed as a means to abrogate the legislative branch’s constitutional power over the nation’s purse strings or to greatly expand the size and scope of the executive branch.

Our organizations are encouraged that a strongly bipartisan group of lawmakers have demonstrated leadership on NEA reform. The NEA reform amendment before the House, spearheaded by Representatives Peter DeFazio (D-OR), Chip Roy (R-TX), Steve Cohen (D-TN), and Peter Meijer (R-MI), would flip the switch on presidential NEA declarations, empowering Congress to serve as a meaningful check on the executive branch. Under the current NEA, Congress merely has the ability to *disapprove* of an NEA declaration through a joint resolution. The ARTICLE ONE Act would require congressional *approval* for an emergency to continue after an initial 30-day period.<sup>10</sup> Similar legislation has been supported by both Democrats and Republicans in Congress. This is certainly a meritorious piece of legislation that lawmakers should include in the FY 2023 NDAA.

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<sup>1</sup> Brennan Center for Justice. “Declared National Emergencies Under the National Emergencies Act.” Updated April 22, 2022. Retrieved from: <https://www.brennancenter.org/our-work/research-reports/declared-national-emergencies-under-national-emergencies-act> (Accessed May 6, 2022.)

<sup>2</sup> *Ibid.*

<sup>3</sup> Congressional Research Service. “Emergency Authorities Under the National Emergencies Act, Stafford Act, and Public Health Service Act.” Updated July 14, 2020. Retrieved from: <https://crsreports.congress.gov/product/pdf/R/R46379> (Accessed May 6, 2022.)

<sup>4</sup> 10 U.S.C. § 712(a)(3).

<sup>5</sup> 42 U.S.C. § 6212a(d)(1)(a).

<sup>6</sup> 7 U.S.C. § 5712(c).

<sup>7</sup> 49 U.S.C. § 114(g).

<sup>8</sup> 40 U.S.C. § 3147.

<sup>9</sup> Carney, Jordain. “Schumer calls for Biden to declare climate emergency.” *The Hill*, January 25, 2021. Retrieved from: <https://thehill.com/homenews/senate/535811-schumer-suggests-biden-should-declare-climate-emergency/> (Accessed May 6, 2022.)

<sup>10</sup> House Committee on Rules. “H.R. 7900 - National Defense Authorization Act for Fiscal Year 2023.” Amendment #345. Retrieved from: [https://amendments-rules.house.gov/amendments/DEFAZI\\_036\\_xml%20\(004\)220703113917573.pdf](https://amendments-rules.house.gov/amendments/DEFAZI_036_xml%20(004)220703113917573.pdf) (Accessed July 5, 2022.).

We encourage you to work with your colleagues to pass NEA reform legislation into law through the FY 2023 NDAA this year. Regardless of who is in control of the White House, or which party is in control of Congress, NEA misuse and abuse puts all Americans – and their tax dollars – at risk. Thank you for your consideration of our views.

Sincerely,



National Taxpayers  
Union



Americans for  
Prosperity



Concerned Veterans  
for America



FreedomWorks



R Street Institute



Taxpayers for Common  
Sense



Taxpayers Protection  
Alliance