

May 16, 2022

The Honorable Steve Cohen
Chair, Subcommittee on the Constitution, Civil
Rights, and Civil Liberties
House Committee on the Judiciary
2141 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Mike Johnson
Ranking Member, Subcommittee on the
Constitution, Civil Rights, and Civil Liberties
House Committee on the Judiciary
2142 Rayburn House Office Building
Washington, D.C. 20515

Dear Chair Cohen, Ranking Member Johnson, and Members of the Subcommittee:

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 you convene your May 17 hearing, “Examining Potential Reforms of Emergency Powers.”

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 1976.¹ 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.² 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. government spending or private sector activity.³ For instance, there are laws allowing the executive branch to restrict various types of exports, including crude oil⁴ and agriculture products;⁵ to control domestic transportation;⁶ and to suspend statutory wage-rate requirements for public contracts.⁷ 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.⁸

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 bipartisan group of lawmakers have demonstrated leadership on NEA reform, including Republican and Democratic members of this Subcommittee, like Subcommittee Chair Cohen (D-TN) and Congressman Chip Roy (R-TX). The ARTICLE ONE Act, spearheaded by Congressman Roy, 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.⁹ Similar legislation has been supported by both Democrats and Republicans in Congress, and the Republican Study Committee

¹ 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.)

² *Ibid.*

³ 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.)

⁴ 42 U.S.C. § 6212a(d)(1)(a).

⁵ 7 U.S.C. § 5712(c).

⁶ 49 U.S.C. § 114(g).

⁷ 40 U.S.C. § 3147.

⁸ 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.)

⁹ Congress.gov. Introduced May 4, 2021. “H.R.2996 - ARTICLE ONE Act.” Retrieved from: <https://www.congress.gov/bill/117th-congress/house-bill/2996> (Accessed May 6, 2022.)

(RSC) has referenced the ARTICLE ONE Act in expressing its support for broader NEA reform efforts.¹⁰ This is certainly a meritorious piece of legislation that lawmakers should consider further.

We encourage you to work with your colleagues to pass NEA reform legislation into law 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

CC: The Honorable Deborah Ross, Subcommittee Vice Chair
The Honorable Jamie Raskin
The Honorable Hank Johnson
The Honorable Sylvia Garcia
The Honorable Cori Bush
The Honorable Sheila Jackson Lee
The Honorable Tom McClintock
The Honorable Chip Roy
The Honorable Michelle Fischbach
The Honorable Burgess Owens

¹⁰ Republican Study Committee. “Power, Practices, Personnel: 100+ Commonsense Solutions to a Better Government.” February 14, 2020. Retrieved from: https://rsc-banks.house.gov/sites/republicanstudycommittee.house.gov/files/GEAR%20Report_Single%20Spread%20FINAL.pdf?page=17 (Accessed May 6, 2022.)