



## **Restoring Congressional Oversight Over Emergency Powers: Exploring Options to Reform the National Emergencies Act**

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**Committee on Homeland Security and Governmental Affairs**

**U.S. Senate**

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Dear Chairman Peters and Ranking Member Paul,

Thank you for the opportunity to provide our view on the National Emergencies Act (NEA) and for holding this important hearing. Americans for Prosperity Foundation [launched the Emergency Powers Reform Project](#) to educate the public about the rampant abuse of emergency powers, including misuse of the Defense Production Act, Strategic Petroleum Reserve, and National Emergencies Act. Congress intended for such delegations of authority to the president to be temporary to respond to emergent crises that require swift action. However, presidents are increasingly using emergency powers to address long-standing policy failures, impose policy preferences, and circumvent our system of checks and balances.

### **The Problem of Effectively Unlimited Executive Power in the National Emergencies Act**

Congress passed the National Emergencies Act of 1976 in an attempt to provide checks and balances to presidential emergency powers, but the law failed to achieve that goal. Presidents of both parties continue to misuse these powers to address long-standing policy problems instead of responding to temporary emergency events.

A declaration of a national emergency under the NEA gives the president potential access to an estimated 148 statutory powers. Under the NEA, national emergencies end upon (i) a presidential declaration, (ii) a year after the declaration if the president fails to file a renewal in the Federal Register, or (iii) a congressional joint resolution terminating the emergency. And because the president can veto congressional joint resolutions to end emergencies, votes would likely require a two-thirds majority in each house to override.

The NEA did not go far enough to constrain presidential authority and, as a result, emergency declarations—and the expanded statutory powers they unlock—can persist for decades. This system is ripe for abuse and presidents have proven reluctant to let go of authority on their own.

### **Cross-Ideological Concern**

There is widespread agreement that the NEA is in dire need of reform. Groups from across the ideological spectrum including the ACLU, Brennan Center, and CREW on the left, and FreedomWorks, National Taxpayers Union, and R Street on the right, wrote a [joint letter](#) to Congress in favor of reform in December 2022.

### **Abusing the NEA by Continuing Emergencies Longer than Needed**

According to the [Brennan Center](#): “25 emergencies have lasted 10 years or longer; 13 of these were declared between 2001 and 2008. The longest-lasting emergency, Blocking Iranian Government Property, was first declared in 1979 on the heels of the hostage crisis and has been persistently renewed for 39 years.”

## Examples of National Emergencies Act Proclamations<sup>1</sup>

<u>Title</u>	<u>Date Enacted</u>	<u>Current Status</u>
<a href="#"><u>Concerning the Novel Coronavirus Disease (COVID-19) Outbreak</u></a>	Mar. 13, 2020	<a href="#"><u>Terminated on April 10, 2023</u></a>
<a href="#"><u>Concerning the Southern Border of the United States</u></a>	Feb. 19, 2019	<a href="#"><u>Terminated on Jan. 20, 2021</u></a>
<a href="#"><u>Declaration of National Emergency by Reason of Certain Terrorist Attacks</u></a>	Sept. 14, 2001	<a href="#"><u>Continued by notice on Sept. 7, 2023</u></a>
<a href="#"><u>Blocking Sudanese Government Property and Prohibiting Transactions with Sudan</u></a>	Nov. 3, 1997	<a href="#"><u>Continued by notice on May 4, 2023</u></a>
<a href="#"><u>Blocking Iranian Government Property</u></a>	Nov. 14, 1979	<a href="#"><u>Continued by notice on Nov. 7, 2023</u></a>

“Emergency powers are designed for events such as terrorist attacks, epidemics and natural disasters — earthquakes, tornados and the like. They aren’t intended to address persistent problems, no matter how dire. And they aren’t meant to be an end-run around Congress.”

–[Elizabeth Goitein](#), co-director of the liberty and national security program at the Brennan Center for Justice

### Reform Principles

- New national emergencies sunset after 30 calendar days and again every six months unless renewal is approved by Congress.
- Existing national emergencies would sunset after six months unless approved by Congress.

We appreciate your leadership in holding a hearing on this matter. This is an incredible opportunity for Congress to assert its oversight authority over a blatantly abused law. If you have any questions, please contact us at [KSchmidt@afphq.org](mailto:KSchmidt@afphq.org) or [TKimbrell@afphq.org](mailto:TKimbrell@afphq.org).

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<sup>1</sup> Full list from the [Brennan Center](#).