



Fact Sheet: Reforming the National Emergencies Act

The Problem

Over the course of the nation's history, Congress has legislated standby authorities that the president can activate when specific emergencies occur.¹ Until the 1970s, presidents exercised this power with essentially no congressional oversight or limitations. But in 1976, Congress enacted the National Emergencies Act (NEA) to counter this unchecked power. The law contained three primary safeguards: (1) states of emergencies would expire after one year unless renewed; (2) Congress could terminate states of emergency at any time using a concurrent resolution that did not require the president's signature to become law (also known as a legislative veto); and (3) Congress would consider ending ongoing states of emergencies every six months.² However, the NEA has proven insufficient as a check on the vast suite of emergency powers.

Right now, the president can access more than 130 extraordinary powers by declaring a national emergency, including restricting travel, organizing and controlling domestic means of industrial production, closing communications facilities, and assigning military forces overseas.³ But the NEA's intent of countering this power has not come to pass. There are more than 40 ongoing national emergencies, the longest running of which dates back to 1979.⁴ And in 1983, the Supreme Court declared a legislative veto unconstitutional, meaning Congress must pass a joint resolution to end a national emergency. This requires either the president to sign the resolution or the resolution to pass with a veto-proof majority.⁵ Since the passage of the NEA, Congress only effectively terminated an emergency once, and successive administrations have routinely renewed ongoing declarations of emergency without any deliberation from Congress.⁶

Presidents from both parties have arguably abused their emergency powers. In 2019, President Donald Trump declared a national emergency to fund a wall along the southern border after Congress opted not to appropriate funds for the project. Congress successfully voted twice to

¹ *Never Ending Emergencies – An Examination of the National Emergencies Act: Hearing before the House Committee on Transportation and Infrastructure, Subcommittee on Economic Development, Public Buildings, and Emergency Management*, 118th Cong. 5 (May 24, 2023) (testimony of Elizabeth Goitein, Senior Director, Liberty and National Security Program, Brennan Center for Justice), <https://docs.house.gov/meetings/PW/PW13/20230524/115858/HHRG-118-PW13-Wstate-GoiteinE-20230524.pdf>.

² 50 U.S. Code Chapter 34 (2024) <https://www.law.cornell.edu/uscode/text/50/chapter-34>.

³ Brennan Center for Justice, *A Guide to Emergency Powers and Their Use* (June 11, 2024), <https://www.brennancenter.org/our-work/research-reports/guide-emergency-powers-and-their-use>.

⁴ Brennan Center for Justice, *Declared National Emergencies Under the National Emergencies Act* (December 2, 2024), <https://www.brennancenter.org/our-work/research-reports/declared-national-emergencies-under-national-emergencies-act>.

⁵ *INS v. Chadha*, 462 U.S. 919 (1983).

⁶ *Never Ending Emergencies – An Examination of the National Emergencies Act* (testimony of Representative Scott Perry, Chairman, Subcommittee on Economic Development, Public Buildings, and Emergency Management), <https://www.govinfo.gov/content/pkg/CHRG-118hhrg52652/pdf/CHRG-118hhrg52652.pdf>.

terminate the emergency, but Trump vetoed the resolution both times.⁷ In 2022, President Joe Biden announced that emergency powers granted under a 2003 law allowed him to cancel student loan debt, a move the Supreme Court later struck down.⁸ These recent examples demonstrate that presidents can simply access emergency powers for problems they deem urgent. Congress must pass reforms to prevent the president from abusing these authorities while still ensuring that the executive can be nimble and equipped to respond to actual emergencies.

The Solution

Congress must strengthen its oversight of national emergencies by passing the following reforms to the NEA:

- Mandate that a presidentially declared national emergency automatically expires after 30 days unless Congress affirmatively votes to extend it.
- Determine that a national emergency declared by the president and approved by Congress expires after one year; Congress must then approve its renewal.
- With each proclamation declaring or renewing a national emergency, require the president to provide a report to Congress that includes a description of the circumstances necessitating the declaration, an estimated duration of the emergency, and a summary of actions the president intends to take (or for renewals, a summary of actions taken in the past year).
- Require the president to provide a report every six months on the status of the emergency and actions they have taken to address it.
- Subject the more than 40 existing national emergencies to the same renewal requirements outlined above.

These reforms were included in various pieces of legislation in the 118th Congress, including the bipartisan ARTICLE ONE Act (H.R. 3988/S. 1912) and REPUBLIC Act (S. 4373).⁹

We recommend Congress also consider the following reforms to emergency powers:

- Ensure that an emergency declaration cannot be used for expenditures Congress has rejected via its authorization or appropriations processes.
- Make presidential reports on emergencies, including expenditures, public.
- Ask the Government Accountability Office to examine existing emergency provisions found across federal statutes to allow Congress to evaluate what might need to be revised or repealed.

Contact

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⁷ Emily Cochrane, “Trump Again Vetoes Measure to End National Emergency,” *New York Times*, October 15, 2019, <https://www.nytimes.com/2019/10/15/us/politics/trump-veto-national-emergency.html>.

⁸ Elizabeth Goitein, “Biden used ‘emergency powers’ to forgive student debt? That’s a slippery slope,” *Washington Post*, September 1, 2022, <https://www.washingtonpost.com/opinions/2022/09/01/biden-student-debt-emergency-powers-are-slippery-slope/>; Amy Howe, “Supreme Court strikes down Biden student-loan forgiveness program,” SCOTUSblog, June 30, 2023, <https://www.scotusblog.com/2023/06/supreme-court-strikes-down-biden-student-loan-forgiveness-program/>.

⁹ ARTICLE ONE Act, S. 1912, 118th Cong., <https://www.congress.gov/bill/118th-congress/senate-bill/1912/text>; REPUBLIC Act, S. 4373, 118th Cong., <https://www.congress.gov/bill/118th-congress/senate-bill/4373/text>.