

Emergency Powers Reform Project: Preventing Abuse of the National Emergencies Act



Congress passed the National Emergencies Act of 1976¹ (NEA) 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 Problem of Effectively Unlimited Executive Power in the National Emergencies Act

The law did not go far enough to constrain presidential authority and, as a result, emergency declarations—and the expanded statutory powers unlocked with them—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.”

This abuse happened most recently with the COVID-19 emergency. During an interview with 60 Minutes on September 18, 2022, President Biden declared the

Examples of National Emergencies Act Proclamations²

TITLE	DATE ENACTED	CURRENT STATUS
Concerning the Novel Coronavirus Disease (COVID-19) Outbreak	Mar. 13, 2020	Terminated on April 10, 2023
Concerning the Southern Border of the United States	Feb. 19, 2019	Terminated on Jan. 20, 2021
Declaration of National Emergency by Reason of Certain Terrorist Attacks	Sept. 14, 2001	Continued by notice on Sept. 9, 2022
Blocking Sudanese Government Property and Prohibiting Transactions with Sudan	Nov. 3, 1997	Continued by notice on Nov. 1, 2022
Blocking Iranian Government Property	Nov. 14, 1979	Continued by notice on Nov. 8, 2022

pandemic “over.” Despite this declaration, the Biden Administration in January voiced its opposition to a joint resolution in Congress to terminate the national emergency for the COVID-19 pandemic, noting that it planned to end the emergency on May 11.

The House and Senate passed the resolution, and on April 10, 2023, President Biden signed it behind closed doors. This is a rare case where Congress was able to force the hand of the president to end a national emergency, albeit only a month sooner than the Biden Administration announced it would end and many months after it was clear the situation no longer rose to the level of a national emergency.

Abusing the NEA to Bypass Congress

Student Loan Forgiveness

One of the statutes available under a national emergency is the HEROES Act of 2003, which the Biden Administration relied on for its student loan forgiveness program that is currently being litigated before the Supreme Court. The purpose of the law was to ensure members of the military called to active service were not harmed by student loan debt while they put their jobs and lives on hold to serve their country. But the Biden Administration, leveraging a national emergency

¹ 50 U.S.C. §§ 1601–1651.

² Full list from the Brennan Center.

declaration, is abusing the law to forgive student loan debt for all borrowers, including those with no evidence of economic harm from the COVID emergency.

Climate Emergency

During the summer of 2022, the Biden Administration faced pressure from Congress and outside groups to declare a national emergency over climate change. The effort garnered 62 cosponsors in the House and four in the Senate. One environmental coalition touted 1,200 signatories in support. Former climate envoy John Kerry said they were “very close” to taking such a step.

Media reports at the time suggested the Administration would use it to ban oil exports and end offshore oil and gas production. Without reform, there is nothing stopping the NEA from further abuse.

“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, 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 sunset after six months unless approved by Congress.

Resources

Brennan Center: Declared National Emergencies Under the National Emergencies Act (Updated Feb. 17, 2023)

FreedomWorks, National Taxpayers Union, Protect Democracy, et al.: Ideologically Diverse Coalition Urges Congress to Enact National Emergencies Act Reform (Dec. 2, 2022)

Congressional Research Service: National Emergency Powers (Feb. 3, 2021)