Brennan Center Calls for Fundamental Reform of the National Emergencies Act of 1976

On May 10, 2019, the Brennan Center joined a coalition calling on Congress to enact fundamental reforms to the National Emergencies Act of 1976 (NEA). Such reform is critical to preventing future abuses of emergency powers that could be disastrous for our democracy, irrespective of who occupies the White House.

For the past 40 years, U.S. presidents have been able to access extraordinary powers by virtue of declaring a national emergency—including powers to shut down communications facilities, seize property, and control the means of production, among military forces abroad, and almost, until the 1970s, powers to seize such emergency powers with essentially no congressional oversight and no limit on how long a state of emergency could last.

Realizing the danger in this situation, Congress enacted the NEA to bolster its own role and to create protections against the abuses of emergency powers. The law contained three primary safeguards: (1) states of emergency would expire after a year unless presidents renewed them; (2) Congress could terminate states of emergency at any time using a “legislative veto” (a concurrent resolution that did not require the president’s signature to become law); and (3) Congress was required to meet every six months to vote to renew emergency powers in effect to consider a vote on whether to extend them.

In the absence of meaningful statutory safeguards, instead of relying on presidents to exercise self-restraint in the use of these incredibly powerful tools, Congress has enacted the National Emergencies Act (NEA), which is supposed to create a more effective, less arbitrary process for determining when a state of emergency is necessary and when it should end. The NEA is a crucial tool for holding the executive branch accountable in times of crisis.

The NEA should include a definition of “national emergency” that would require the president to prove that the federal government has the authority to take action under the Constitution; that the emergency is real and not just the product of speculation or wishful thinking; and that the action is necessary and proportionate to the threat.

In the absence of meaningful statutory protections, the Brennan Center calls on Congress to enact a constitutional amendment to make it unconstitutional for the president to declare a national emergency without the consent of two-thirds of both houses of Congress.

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Several other examples of legislative initiatives that would address some of the issues raised in the Brennan Center’s post include:

- The National Emergencies Act Reform Act of 2019 (H.R. 2306)
- The National Emergency Reform Act of 2019 (H.R. 2309)
- The National Emergency Reform Act of 2019 (S. 123)
opportunity close.

Sincerely,

Brennan Center for Justice at NYU School of Law
CREDO Action

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Project On Government Oversight
Public Citizen
Republicans for the Rule of Law
Stand Up Republic
Win Without War

cc: Members of Congress

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