

July 20, 2021

Dear Honorable Members of the U.S. Senate:

We, the undersigned organizations, focused variously on war powers, emergency powers, the constitutional separation of powers, human rights and civil liberties, and arms transfers, write to express our strong support for the National Security Powers Act of 2021 (NSPA). The NSPA presents an opportunity for Congress to enact the most important recalibration of the balance of power between the President and Congress in decades. We ask that you co-sponsor this critically needed piece of legislation.

The system of checks and balances enshrined in the Constitution is broken. We have found ourselves in an era of government in which the executive can sell weapons indiscriminately, make war and use lethal force unilaterally, and declare emergencies in perpetuity. We believe strongly in the need for the people's representatives to reclaim their proper constitutional role on these critical issues in the service of peace, prosperity, and democratic governance.

To this end, we urge you to enact the fundamental reforms of the War Powers Resolution of 1973 (WPR), the National Emergencies Act of 1976 (NEA), and the Arms Export Control Act of 1976 (AECA) outlined in the National Security Powers Act.

Reforming the War Powers Resolution of 1973 (WPR)

The WPR, enacted toward the end of the Vietnam War, sought to reassert Congressional prerogatives with respect to matters of war and peace. It has been moderately successful in keeping Congress informed on decisions related to the use of force but has often failed to prevent Presidents from taking the nation into elective war or continuing hostilities without Congressional authorization.

On its face, the existing war powers framework both denies the President authority to keep U.S. Armed Forces in hostilities beyond 60 days absent a declaration of war or specific statutory authorization, and grants Congress the ability to direct the President to remove such forces from unauthorized hostilities through a majority vote in both chambers. But in practice the framework has not functioned as intended. While it has sometimes proven to be an effective messaging tool, the current law has been flexibly interpreted by the executive branch, weakened by judicial precedent, and too often honored in the breach. It has accordingly not proven to be an effective mechanism for restoring Congress to its constitutionally envisaged role as a check on imprudent war-making by the executive branch.

The NSPA would revitalize the war powers framework by introducing clear definitions, including for key term "hostilities"; strengthening reporting requirements; shortening the 60-day period after which the President must terminate activities that have not been authorized by Congress; and automatically denying funding for forces to engage in hostilities that have not been duly authorized within the revised time frame.

The NSPA also contemplates that future force authorizations must be specific with respect to mission and adversary; can be expanded only by further congressional authorization; and will extend no longer than two years from enactment, after which reauthorization is required,

Reforming the National Emergencies Act of 1976 (NEA)

For the past 100 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, organize and control the means of production, assign military forces abroad, and restrict travel. Until the 1970s, presidents were able to invoke 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 abuse of emergency powers. The law, however, has not worked as Congress intended. The one-year expiration period established by the NEA, which was supposed to be the default, has become the exception. Moreover, the primary safeguard in the law—Congress’s ability to terminate emergency declarations through a concurrent resolution—was removed after the Supreme Court held that such “legislative vetoes” are unconstitutional. As a result, there are 40 states of emergency in effect today, with the longest dating back to the Iranian hostage crisis of 1979. In the absence of meaningful statutory safeguards, we must instead rely on presidents to exercise self-restraint in the use of these incredibly potent powers.

Accordingly, the NSPA would: require that a presidentially-declared national emergency automatically expire after 30 days unless Congress votes to approve it; allow approved emergencies to continue for up to a year, but require congressional approval for further extensions; establish a maximum period of time for the emergency; require that the powers invoked to address an emergency relate to the nature of, and be used only to address, that specific emergency; and create enhanced reporting requirements. The NSPA does not include a judicial review provision, which some of the undersigned organizations view as an important safeguard, but such a provision could easily be added as this legislation moves forward.

Reforming the Arms Export Control Act of 1976 (AECA)

The AECA establishes the rules for making arms transfers and outlines regulations, processes, and procedures for their approval. Under the AECA, Congress can pass legislation to modify or block a proposed sale, in the absence of which a potential weapons transfer is generally free to move forward.

However, blocking an arms sale under the AECA requires a joint resolution of disapproval, which must be passed by a two-thirds majority in both chambers to overcome a likely presidential veto. Reestablishing congressional oversight will require adjusting AECA procedures to guarantee Congress an opportunity to block problematic arms sales without requiring a two-thirds majority. This is best achieved by “flipping the script” through an affirmative vote.

The NSPA would require Congress to affirmatively authorize foreign military sales and direct commercial sales of the most dangerous and destabilizing weapons; retain the presumption of

approval for NATO allies and key defense partners; and eliminate the use of the emergency waiver for manufacturing or co-production of articles or services outside the United States.

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The undersigned groups represent multiple perspectives, political viewpoints, and areas of expertise and have come together with the common goal of restoring these fundamental checks and balances. We urge you to do the same by co-sponsoring the National Security Powers Act.

To co-sponsor, please contact Jessica Elledge at Jessica_Elledge@murphy.senate.gov

Sincerely,

American Civil Liberties Union (ACLU)
Brennan Center for Justice at NYU Law School
Center for Civilians in Conflict (CIVIC)
Common Defense
Concerned Veterans for Americans
Demand Progress
Foreign Policy for America
FreedomWorks
Friends Committee on National Legislation
Indivisible
International Crisis Group
Niskanen Center
Open Society Policy Center
Project on Government Oversight
Protect Democracy
Public Citizen
Quincy Institute for Responsible Statecraft
R Street Institute
VoteVets
Win Without War