

United States Senate

WASHINGTON, DC 20510-4404

COMMITTEES:
JUDICIARY
ENERGY AND
NATURAL RESOURCES
COMMERCE, SCIENCE,
AND TRANSPORTATION
JOINT ECONOMIC
COMMITTEE

October 17, 2019

The Honorable Mitch McConnell
Majority Leader
U.S. Senate
317 Russell Senate Office Building
Washington, DC 20510

The Honorable Charles E. Schumer
Minority Leader
U.S. Senate
322 Hart Senate Office Building
Washington, DC 20510

Dear Majority Leader McConnell and Minority Leader Schumer:

We request that S. 764, the “Assuring that Robust, Thorough, and Informed Congressional Leadership is Exercised Over National Emergencies Act” (ARTICLE ONE Act),¹ as reported out of committee, be considered by the full Senate as soon as possible upon. Introduced by Senator Mike Lee on March 12, 2019, the bill was reported favorably by voice vote with an amendment by the Senate Committee on Homeland Security and Governmental Affairs on July 24.² This important legislation amends the National Emergencies Act (NEA), which has not been meaningfully reconsidered since it was passed 43 years ago.³

The U.S. Constitution makes clear the power to make law is vested in Congress alone,⁴ and yet Congress has consistently ceded more and more of that power to the Executive Branch in the form of “emergency” authorities. Prior to the NEA’s passage, the President was both the lone arbiter of what constitutes an emergency and the wielder of a capacious quiver of extraordinary emergency powers—powers that Justice Jackson observed, lie “about like a loaded weapon.”⁵ The NEA—the product of a bipartisan Special Committee in 1976—was intended to provide a way for Congress to reassert its policymaking prerogative in emergency situations, where there was previously no systematic way for Congress to meaningfully consider, limit, and, if needed, terminate declarations of an emergency by a President. As the Special Committee concluded,

¹ S. 764, 116th Cong. (2019).

² *Business Meeting of the U.S. S. Comm. on Homeland Security and Governmental Affairs*, 116th Cong. (July 24, 2019), <https://www.hsgac.senate.gov/imo/media/doc/Committee%20Record-2019-07-241.pdf>.

³ Pub. L. 94-412 (1976).

⁴ U.S. CONST. art. I, § 1, 8.

⁵ *Korematsu v. United States*, 323 U.S. 214 (1944) (J. Jackson, dissenting).

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“Congress, through its own actions has transferred awesome magnitudes of power to the Executive without ever examining the cumulative effect of that delegation of responsibility.”⁶ A subsequent Supreme Court case, however, greatly weakened the disapproval mechanism in the NEA by requiring a veto-proof majority in Congress to terminate an emergency declaration.⁷

Recent emergency declarations have highlighted this issue,⁸ but as one of our colleagues recently put it, “[i]t isn’t this president who started it. It’s been a series of, over decades, Congress delegating way too much to the executive.”⁹ Indeed a recent analysis found “123 statutory powers that may become available to the president when he declares a national emergency.”¹⁰ The ARTICLE ONE Act does not address the wisdom or utility of any of those authorities, but rather proposes a neutral process for Congress to determine which authorities are invoked. In this way, the bill rebalances the authority shared between Congress and the Executive.

The ARTICLE ONE Act achieves this end by inverting the process for congressional review; the bill makes clear that any emergency authorities invoked expire within 30 days unless Congress, through a simple majority and streamlined floor procedures, votes to approve the emergency. Additionally, as a result of bipartisan cooperation during committee consideration, and in consultation with the Treasury and State departments, the bill as amended would not apply to the emergency authorities under the International Emergency Economic Powers Act, which allows the President to block assets and impose economic sanctions on hostile foreign governments, terrorists, and other malign international actors.¹¹ It also clarifies, however, that those emergency economic authorities do not permit the imposition of tariffs or trade quotas.

The ARTICLE ONE Act’s proposition is simple but fundamental: Congress cannot continue to cede its powers to another branch, regardless of who is President or which party holds a majority. The ARTICLE ONE Act is a small, nonpartisan step toward re-establishing the appropriate checks and balances between the Congress and the Executive that results in a federal government that is truly accountable to the people.

Thank you for working with us on this legislation.

Sincerely,

⁶ U.S. Senate Special Committee on National Emergencies and Delegated Emergency Powers, *National Emergencies and Delegated Emergency Powers: Final Report of the Special Committee on National Emergency and Delegated Emergency Powers*, Washington: U.S. Gov’t Print. Off., 1976 (1).

⁷ *INS v. Chadha*, 492 U.S. 919 (1983).

⁸ See, e.g., Proclamation No. 9844, 84 Fed. Reg. 4949 (Feb. 20, 2019).

⁹ Kelsey Snell, *Anxiety Is Growing In Congress Over How Much Power A President Can Wield*, Nat’l Pub. Radio, Mar. 12, 2019 (quoting Sen. Tim Kaine), <https://www.npr.org/2019/03/12/702735113/anxiety-is-growing-in-congress-over-how-much-power-a-president-can-wield>.

¹⁰ Brennan Ctr. for Justice, *A Guide to Emergency Powers and Their Use* ii (Dec. 5, 2018),

https://www.brennancenter.org/sites/default/files/legislation/AGuideToEmergencyPowersAndTheirUse_2.13.19.pdf

¹¹ Pub. L. 95-223 (1977).



Mike Lee



Ron Johnson



Gary Peters



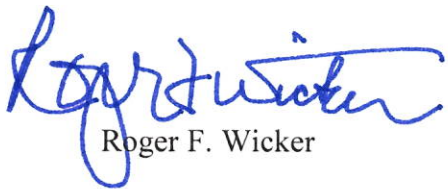
Kyrsten Sinema



Roy Blunt



Margaret Wood Hassan



Roger F. Wicker



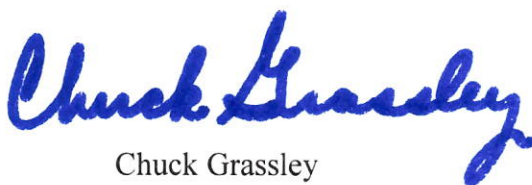
Tom Udall



Rob Portman



Brian Schatz



Chuck Grassley



Mitt Romney



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Majority Leader Mitch McConnell

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