



Congress and COVID-19

WE NEEDED LEADERSHIP;
THEY GAVE US CASH

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Executive Summary

This report provides the first comprehensive account of Congress' response to the COVID-19 pandemic. While some political observers feared that partisan polarization and general complacency had left the federal government unable to act, no matter how dire the circumstance, in fact the coronavirus emergency provoked a historic flurry of congressional activity. By uniting behind deals negotiated by their leaders, legislators proved themselves able to rapidly mobilize trillions of dollars through massive deficit spending unprecedented in peacetime.

But the historic legislation they passed in March and April 2020 was accompanied by little meaningful public deliberation about the difficult trade-offs that COVID-19 forced onto American society. As the acute phase of crisis response abated, lawmakers never seriously pursued broadly acceptable compromises on crucial issues such as lockdowns, testing, and vaccine regulations. Although Congress provided a second major round of spending with laws in December 2020 and March 2021, COVID-19 mostly disappeared from

the legislature's agenda even as it killed hundreds of thousands more Americans.

A widespread belief that public health experts were best suited to handle pandemic policy questions leads some observers to question whether legislators could have contributed by being more active. But legislators' deference to agencies such as the Centers for Disease Control and the Food and Drug Administration was often unwarranted, as bureaucrats refused to depart from familiar routines to confront the fast-moving crisis.

A more active legislature, taking into account all manner of considerations, including *but not limited to* public health concerns, would have been better equipped to broker compromises backed by broad coalitions. Such work could have secured better policies and a less rancorous politics. We must reflect on Congress' failures of leadership in response to COVID-19 if we hope to achieve better results when confronted with future emergencies.

Introduction

The novel coronavirus that originated in Wuhan, China, and subsequently spread to the United States in the early months of 2020 has killed more than 750,000 Americans, infected tens of millions, and utterly disrupted our country's social routines and economic activities. While some political observers feared that partisan polarization and general complacency had left the federal government unable to act, no matter how dire the circumstance, in fact this emergency provoked a historic expansion of government activity at all levels. This included Congress, which made available trillions of dollars through massive deficit spending unprecedented in peacetime and unknown in the United States since the end of World War II.

Some small portion of this money—still a hefty sum in absolute terms—was devoted to combating the virus' spread, developing medicines to treat it, and speeding the development and manufacture of the vaccines that would ultimately give the nation the means to render the virus less deadly. Much more of the money was directed toward economic relief, providing support for individuals and firms whose incomes were threatened by the virus-induced economic shutdowns urged by the federal government and adopted nationwide. This response was modeled, in part, on the federal government's response to the financial crisis of 2007–08 and the ensuing Great Recession, but it went much further in the types of entities supported and the amounts of money provided. Whereas the government's aid during the financial crisis was fiercely contested, there was strikingly little political resistance in Congress to the much larger aid packages of 2020, each of which was passed by overwhelming bipartisan majorities and signed by President Donald Trump.

The responses to the coronavirus were hardly free of political controversy, though. To the contrary,

2020 was perhaps the most explosive year in American politics since 1968, marked by mass protests that sometimes turned into violent riots, widespread accusations of illegitimacy leveled against political actors of both parties, and an intensification of the political enmity that had already existed before the virus' arrival. Testing, non-pharmaceutical interventions (including mandating social distancing, business closures, and masks), and vaccination all became objects of fierce political contestation. Congress tangentially engaged each controversy, but it made few attempts to address any of them head-on, let alone provide politically acceptable compromises.

This report offers the first comprehensive account of Congress' COVID-19 deliberation and legislation, thus offering an important addition to the many executive branch-centered accounts of COVID-19 policymaking that have been published recently. Few people seem to wonder about Congress' role, and, though dissatisfactions abound, even fewer seem to suggest that Congress could have constructively improved the quality of federal COVID-19 policy and made the politics around the issue less toxic. In providing a critical analysis of the legislature's record, this report seeks to show that members of Congress were, in fact, the officials best positioned to work through the difficult trade-offs that COVID-19 forced on the nation. To do so, they would have had to have gone beyond criticizing public health authorities to actively reforming them—an effort that has been strikingly absent to date.

The first part of the report provides a chronological account in five sections. First, it begins with a brief prehistory, looking at efforts to ready the nation for a pandemic in the first two decades of the 21st century. Second, turning to the pandemic era, it examines Congress' first notice of the coronavirus as a foreign

development worth watching and its late-February realization that this would be a major challenge for the United States. Third, it describes the politics and policy of the four major pieces of legislation Congress passed in March and April, with attention to the questions that legislators did *not* raise, as well as those they did. Fourth, it seeks to understand why Congress seemed to accomplish so little over the next half year, arguing that this was as much a function of universally low expectations as it was a consequence of simple partisanship. Fifth, it looks at the massive spending bill enacted in the lame-duck session of the 116th Congress—the longest statute in congressional history—and the stimulus law enacted in March 2021 on a party-line vote, signed into law by President Joe Biden.

The second part offers two critical, thematic sections. First, it examines Congress' oversight activities during the pandemic. Many members of Congress felt that, in responding to the financial crisis a decade prior, Congress had not taken sufficient care to preclude the possibility of bailouts without accountability. In writing the emergency legislation of March 2020, then, members insisted on numerous accountability features, including a Pandemic Response Accountability Committee (PRAC) that brought together the government's inspectors general, a Congressional Oversight Commission charged with overseeing Treasury Department activities, and a dedicated subcommittee on the House Committee on Oversight and Reform, chaired by the majority whip. The report considers these bodies' activities and asks why they ended up with such limited public profiles compared to parallel bodies working during the Great Recession, concluding that changes in the public's orientation toward deficit spending and the universality of some pandemic spending programs were major differences. It nevertheless argues that oversight activities should have led to active reform efforts.

Second, part two considers why Congress did so little to attempt to resolve the thorny conflicts over

non-pharmaceutical interventions, testing, and vaccines. Some legislators' reluctance to weigh in on these issues is attributable to the Constitution's federal structure, which leaves states with the ultimate authority to address public health issues. But members were often eager to defer to the authority of other actors in the federal government, especially the Centers for Disease Control and Prevention (CDC) and Food and Drug Administration (FDA). By framing many difficult political questions as matters to be decided by scientific experts, legislators sought to avoid blame. Although complaints about the decisions made by these bodies were legion, there was strikingly little effort to force changes to their operating procedures through legislation. Some lawmakers undoubtedly worried that their interventions might make things worse, perhaps by diminishing public trust in expert institutions, but they seem to have not appreciated the impossible situation that their refusal of responsibility created for public health authorities.

Finally, a brief third part of the report concludes with an indictment: In short, we needed leadership, and they gave us cash. Treating every question as one of funding made life easier for a Congress unconcerned by massive deficit spending, and at the outset of the pandemic, this approach had advantages. But as the pandemic wore on, Congress should have realized that a lack of cash was not the primary impediment to combating COVID-19 effectively. It should have sought to work out nationwide compromises on some of the most difficult questions, including testing, school closures, vaccine eligibility, and vaccine mandates.

Finding common ground on these issues would have been difficult, but real possibilities for accommodation existed. Many would have entailed changing the way the government's public health regulators operate, but legislators have been remarkably timid in broaching these issues. Unless they find the courage to do so, there is little reason to hope that our next pandemic experience will be any less politically divisive.

I. Congress' COVID-19 Legislating—a Brief Chronicle

In an era characterized by partisan polarization and stalemate, Congress' burst of lawmaking in response to the coronavirus emergency will cast a long historical shadow. This part of the report chronicles the institution's actions from the years preceding the arrival of COVID-19 through the end of 2021.

Prehistory: Pandemic Preparedness in the Before-Times

For many of us who experienced it in early 2020, the calamity of COVID-19 came on incredibly quickly. The mid-March shutdowns, in particular, transformed our lives completely in days. But the federal government was not caught completely unprepared. The Public Health Service Act, first passed in 1944 and amended many times, gave the federal government some quarantine authority and organized disparate public health agencies to combat epidemic disease.

Much of the government's capacity in 2020 was of far more recent vintage, however. Worries about bioterrorism after the sarin gas attack on the Tokyo subway in 1995 had led President Bill Clinton and Congress to fund a civilian stockpile of medical equipment in 1998.¹ After 9/11 and the anthrax attack that followed later in September 2001, Congress' concern about bioterrorism only increased. The SARS epidemic in 2003 and H1N1 influenza in 2009 largely fizzled out in the United States, but their spread in Asia ensured that unintentional outbreaks would also get legislative attention. Congress passed several important pieces of legislation that shaped the country's capacity to respond to the novel coronavirus in 2020.

The Project Bioshield Act of 2003, passed at the urging of the George W. Bush administration, sought to make the nation better able to cope with chemical, biological, radiological, or nuclear attacks. The law makes it easier for the Department of Health and Human Services (HHS) to procure supplies, hire experts, and award grants in response to an emergency; creates a framework for government purchase guarantees meant to facilitate private investment in various countermeasures that might otherwise not be commercially viable; and, most importantly, puts in place the procedure for Emergency Use Authorizations, by which the FDA can give accelerated temporary approval to countermeasures in response to a public health emergency.² The Public Readiness and Emergency Preparedness Act, which was included in a supplemental emergency spending bill passed at the end of 2005, created a liability shield for businesses administering countermeasures during a public health emergency.³

Another key series of statutes authorized spending for various preparedness activities: the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, the Pandemic and All-Hazards Preparedness Act of 2006, a reauthorization of that act in 2013, and the Pandemic and All-Hazards Preparedness and Advancing Innovation Act of 2019. The 2006 act created the Biomedical Advanced Research and Development Authority, an office charged with developing and readying medical countermeasures for public health emergencies. It also created the Office of the Assistant Secretary for Preparedness and Response in HHS, ensuring that a high-level federal executive would devote his or her full attention to these issues. Together, these laws

created a detailed National Health Security Strategy meant to prepare the country to respond quickly to any public health threat.

With these tools at their disposal, various federal agencies responded energetically to the outbreak of Ebola in West Africa in 2014–15, successfully limiting it and preventing its spread in the United States. One participant in this effort believes that, precisely because of the success in keeping Ebola away, “the Ebola experience did not engender major review or reinforcement of U.S. structures or level of effort.”⁴ Instead, funding made available for that emergency expired without being reappropriated, and “we were left with a complacency that capacity would be sufficient to deal with an outbreak or epidemic.” Similarly, while the Asian experiences with SARS and H1N1 did alert Americans to the importance of pandemics, this country’s rather mild experiences may have left us without a sufficient sense of resolve to attack the threat of a virus early on, before its exponential spread made containment impossible.

Most experts agree that, despite the recent laws Congress passed, pandemic preparedness was severely underfunded in the 2010s.⁵ A Public Health Emergency Fund was meant to provide support for meeting a fast-moving challenge, but it had a zero balance at least since 2012.⁶ Proposals to restore its funding had gone nowhere. Leading up to 2020, the CDC’s prevention budget had been cut for three consecutive years. The 2019 act had created a separate fund, the Infectious Disease Rapid Response Reserve Fund, but the \$105 million available in it as of early 2020 was used up by early February.⁷ A steady parade of Cassandra had been warning that the United States was not adequately preparing itself for a pandemic, but their warnings had gone unheeded even in an era of rapidly increasing deficit spending.

Congress’ attention to pandemic preparedness in the two decades leading up to the novel coronavirus’ arrival did put in place some helpful structures and tools. Unfortunately, by failing to provide sufficient resources for them, Congress hamstrung its own preparations. Such a failing may be unsurprising for democratic governments preoccupied with more pressing issues, but some other developed countries

did significantly better readying themselves for the threat of a novel virus. South Korea, in particular, distinguished itself with efficient suppression of the virus and relentless contact tracing.⁸ Its parliament also proved quite nimble in updating the powers available to public health officials.⁹ Wise preparation and efficient response should not be considered unattainable, then.

In the event, Congress overestimated our level of preparedness in January and February 2020, when members showed a clear awareness of the threat of coronavirus but did little to actively combat it.

Early Warnings: January–February 2020

The first mention of coronavirus in the *Congressional Record* in 2020 came during the (first) impeachment trial of President Trump. On January 23, Senate Majority Leader Mitch McConnell (R-KY) briefly interrupted the proceedings to tell his colleagues that they would have an off-the-record briefing about coronavirus that morning.¹⁰ Various arms of the federal government were actively monitoring the outbreak in Wuhan, and they were keeping legislators apprised of developments overseas.

In its public-facing activities, however, Congress did little to suggest a serious fear of the virus. Then-Rep. Roger Marshall (R-KS), a physician, briefly addressed coronavirus on January 28, offering Americans some sensible, if generic, advice about disease prevention and saying that he was “confident in the measures being taken by our national healthcare officials and agencies.”¹¹

This tone of confidence largely persisted into the first congressional committee hearings addressing coronavirus. The House Foreign Relation Committee’s Subcommittee on Asia, the Pacific, Central Asia, and Nonproliferation, chaired by Rep. Ami Bera (D-CA), held the first such hearing on February 5, 2020, featuring testimony from two leading lights of the public health world and Ron Klain, who had served as White House Ebola response coordinator from 2014 to 2015. This meeting came about a week after President Trump suspended entry of foreign

nationals who had recently traveled in mainland China.

But, as Bera would later reflect, the testimony his subcommittee received that day already strongly suggested that America's chances to prevent the virus' spread domestically were small. Klain, in particular, warned that the country was probably not willing or able to undertake the kind of quarantine effort that would be necessary, given how many travelers (including American citizens) were potentially exposed. "We don't have a travel ban. We have a travel Band-Aid," he quipped.¹² Notwithstanding the witnesses' worries, members of the committee continued to sound notes of optimistic confidence in the administration's efforts. To give a sense of Congress' broader priorities at this point, in a floor speech the next day, Rep. Jared Huffman (D-CA) said that the "epidemic" most in need of congressional attention was the nation's gun violence problem.¹³

Congress was swinging into motion at this point. Senior appropriator Rep. Rosa DeLauro (D-CT) noted that her committee was working with the administration on a supplemental spending package that she expected would receive quick, bipartisan action—though, in the end, it would be a full month before Congress passed this bill.¹⁴ Before long, bipartisan professions of confidence in the administration's response were replaced by sharp Democratic criticisms of the administration's budget proposal, which had included cuts to HHS accounts needed to combat the pandemic.¹⁵ A hearing of the Senate Homeland Security and Governmental Affairs Committee on February 12 featured many members asking pointed questions about America's testing capabilities. They mostly seemed to be satisfied by the explanations they received from the witnesses, former high-ranking public health officials who explained the FDA's and CDC's processes and avowed confidence in their work.¹⁶

Congress' relatively passive stance during this period is understandable. The legislature had built a federal infrastructure for dealing with epidemic disease, and nothing yet clearly indicated it was overwhelmed. When told by the administration that more

funds were needed, they began the process of making those funds available.

It soon became apparent, however, that Congress, and the American people, had been far too trusting and complacent. Sen. John Cornyn (R-TX) expressed concerns that American citizens quarantined at Lackland Air Force Base had improperly been released into local hospitals for testing, though he believed that problem had been resolved after communicating with the administration.¹⁷ Far more pointed were attacks that Senate Minority Leader Chuck Schumer (D-NY) began on February 25, when he accused the Trump administration of "towering and dangerous incompetence" in their coronavirus response.¹⁸ Schumer's criticisms focused on the lack of a designated point person in shaping the administration's response, inadequate request for funding, and a need to expedite the delivery of testing kits around the country. In the following days, Democratic and Republican members traded barbs over which side was holding up funding, while appropriators were finalizing behind-the-scenes terms of the first funding bill.

Working toward provision of new funding was undoubtedly useful for Congress to be doing at this point. Still, it is remarkable just how little Congress was able to shed light on, let alone critically improve, the failing processes that led to February becoming a "lost month" in America's fight against coronavirus.¹⁹ Few members were yet up to the task of submitting bills responsive to the problems at hand.²⁰

When the CDC's development of a working test seemed to be failing, members of Congress were repeatedly satisfied with assurances that a fix was just a week away. For most issues, there is little harm if an administration is given time to work out ongoing problems. In a pandemic, however, efforts undertaken at the beginning of the crisis take on outsized importance. One might have thought that Democrats in Congress, who were so openly hostile to the Trump administration by this point, would have taken a less accommodating stance, but in fact both sides exhibited remarkable, and unwise, patience with the bureaucracy.

Massive Response: March–April 2020

It was not until February 26 that the American medical community first detected community spread in the United States—that is, passage of the virus to a person who had not recently traveled abroad. The official case count in the United States at that time was just 15—a point the president repeatedly emphasized. In many of their public statements, America’s political leaders ended February downplaying the risks of coronavirus for Americans.²¹ Even amid this widespread complacency, Congress was well on its way to passing its first spending bill to combat COVID-19.

In the first week of March, it became clear to all that, in fact, the virus had spread substantially, including in a number of the country’s largest cities. Poor testing, rather than successful suppression, had been responsible for low case counts. By the second week of March, exponential spread was obvious. In the second half of the month, hospitals were overwhelmed in New York City and New Orleans, and virtually the whole country had instituted lockdowns of varying severity. Congress also began to more aggressively question some of the public health leaders, including on the availability of tests.²²

Congress worked furiously throughout March and ultimately passed three bills of increasing size, with the last representing the largest supplemental spending bill in the country’s history. Its members then absented themselves from Washington, though enough reconvened to pass a major follow-up bill in April.

Congressional leaders justifiably look back on this record of ambitious legislation with pride. Far from being paralyzed by partisanship, Congress was able to erect a massive crisis response apparatus in a matter of weeks, on a bipartisan basis, even as positive diagnoses of some staffers and then some members themselves forced many legislators to self-quarantine.²³ The central provisions of these laws, designed to provide economic support for a country suffering soaring shutdown-induced unemployment, were remarkably successful at maintaining Americans’ standard of living during the pandemic. This record of accomplishment deserves appreciation.

That said, some features of Congress’ massive response in March and April ought to give us pause. Especially given how massive the bills under consideration were, they received strikingly little public deliberation. By all accounts, they were created through the work of congressional leaders in negotiation with the White House, leaving the vast majority of members feeling as though they had little input in the process. Indeed, the House did little business after March 13, convening bare majorities to pass these major statutes with little debate. Senators were mostly absent in April, with the law passed that month being affirmed by a voice vote of a small portion of the chamber.

If this were simply an affront to the dignity of rank-and-file members of Congress, it would be of little concern. But in fact it left many of the most important questions roiling the country totally unresolved. That was forgivable in the fog of war that characterized this period. But, as later sections explore, it was a defect that Congress was never to squarely confront. The overwhelming bipartisanship of the March and April actions thus laid the stage for the bitter partisanship that dominated the country’s thinking about COVID-19 by the summer.

Coronavirus Preparedness and Response Supplemental Appropriations Act (Signed March 6, 2020). The chair of the House Appropriation Committee, Rep. Nita Lowey (D-NY), introduced H.R. 6074 on March 4 and, that afternoon, moved for its passage under suspension of the rules. The \$8.3 billion supplemental spending bill, which was much larger than the \$2.5 billion that the Trump administration had requested two weeks earlier, included roughly \$4 billion to support development of vaccines and treatments, \$1 billion for state and local governments, and \$1.3 billion for humanitarian assistance and disease detection abroad, among other things. The bill received 40 minutes of debate, which largely consisted of members of both parties applauding the cooperative effort that produced the bill, and was then approved, 415–2.

In the Senate, Majority Leader McConnell hoped to pass the bill by unanimous consent but was stopped by Sen. Rand Paul (R-KY), who supported

the spending but wanted to see it offset by cutting other international aid. In exchange for Paul allowing the bill to proceed, McConnell arranged to have the Senate consider an amendment from Paul that would have implemented such offsets. That amendment was tabled by an 80–16 vote on March 5. Immediately after, the Senate adopted the unamended bill, 96–1. Paul’s call for fiscal restraint may have attracted 15 of his colleagues in this instance, but for the vast majority of legislators in both chambers, the growing emergency quickly made such concerns seem irrelevant. By designating all three bills as emergency spending, legislators effectively circumvented normal budgetary rules that might have otherwise forced them to include revenue-increasing measures.

Congressional leaders were pleased with their institution’s performance in moving this bill. The day before its introduction, Schumer said that members of Congress from both parties were “acting like the adults in the room” compared to the administration. Certainly, hustling this bill through at a larger size than the administration had originally sought would seem prudent in retrospect; none of this spending would come to seem regrettable, whatever anyone’s deficit concerns might be. Indeed, the only real criticism of this first bill worth considering is that it should have been faster and larger. But Congress, not generally thought of as speedy, had acted sooner than most major American institutions.

Families First Coronavirus Response Act (Signed March 18, 2020). Even as the first supplemental bill was being hurried into law, Congress had already turned its attention to a much more ambitious sequel. This bill would guarantee no-cost testing for all Americans (with payment coming either through their health insurer or the federal government), guarantee and fund paid sick leave and paid family leave (both broadly defined) through the end of 2020, support unemployment benefits, boost food stamps, ensure school lunch programs would still operate despite school closures, and increase Medicaid matching rates to provide fiscal relief to states, among other things.

All told, it was estimated to cost \$192 billion over 10 years, just \$2.5 billion of which was through additional discretionary spending. Much of the cost would come through increases in mandatory spending—in other words, by expanding existing entitlements and creating new ones, including through the creation of new obligations for all American businesses.²⁴

Rep. Lowey first introduced the bill on Wednesday, March 11. Staffers in many House committees, including Agriculture, Appropriations, Education and Labor, Energy and Commerce, and Ways and Means, had drafted its components.²⁵ Unlike the first supplemental appropriations bill, there was immediate partisan controversy about the terms of the Families First Coronavirus Response Act (FFCRA). In short, Republicans believed the new sick leave and family medical leave requirements for small business would prove ruinous in the short term, even if the federal government would eventually reimburse employers for their COVID-19-related leave costs. Trump and his congressional allies pushed to offer small businesses immediate relief through changes to tax filing requirements, and the Department of Labor made various assurances about the rules it would issue to make the new requirements workable for small business. A second version of the bill was then negotiated that allowed businesses to claim tax credits on their employment tax returns, filed quarterly, and immediately reduce their payroll tax deposits to offset payments made for leave.²⁶

That new version of the bill was brought to the House floor late Friday night (into the wee hours of Saturday morning).²⁷ Lowey immediately moved to pass the bill under suspension of the rules. Although 40 minutes were allotted for debate, in practice it went directly to a vote after brief statements in support of the bill by Lowey and the ranking member of the Ways and Means Committee, Rep. Kevin Brady (R-TX).²⁸ The bill was approved 363–40, with the dissenters (all Republicans) unconvinced the changes would adequately protect businesses. Rep. Justin Amash (I-MI) voted “present,” complaining that members were given almost no time to comprehend the revised bill before being asked to vote it through.²⁹

The Senate took up the bill the following Wednesday, March 18. Having mostly turned its energies to the “third” COVID-19 relief bill, its members were mostly content to move the FFCRA along.³⁰ Three amendments were put to votes and rejected by the chamber: (1) Sen. Paul’s, which would have partially paid for the bill’s spending by ending the war in Afghanistan (defeated 3–95); (2) Sen. Patty Murray’s (D-WA), which would have created a more generous and permanent sick leave entitlement (defeated 50–48, short of the 60-vote threshold); and (3) Sen. Ron Johnson’s (R-WI), which would have stripped the paid sick leave from the bill entirely while expanding the unemployment support (defeated 47–51). The House version of the bill was then passed, 90–8.

The FFCRA, which was primarily the House’s creation, impressively showcased Congress’ ability to negotiate a complex emergency statute quickly. Far more involved than providing a few billion dollars, creating a new entitlement program and tax credit system on the fly showed considerable policy capacity. The program seems to have worked well through the expiration of its mandate at the end of 2020, and Congress would extend the tax credits for employers that chose to continue offering leave in both the December 2020 appropriations bill and the March 2021 American Rescue Plan Act.

Given the starting position of significant disagreement between the parties, it also showed political acumen that many people doubted Congress was still capable of summoning in the wake of Trump’s first impeachment. House leaders had the ability to work quickly and demand a vote immediately, and members from both parties overwhelmingly went along, Amash’s objection at being corralled notwithstanding. Most of his colleagues trusted their leaders in the midst of a crisis.

Coronavirus Aid, Relief, and Economic Security Act (Signed March 27, 2020). The House promptly recessed after passing the FFCRA, originally planning to return in a week. But even before that law had been taken up by the Senate, House leaders told their members that they would not return to session until the next coronavirus relief bill—“phase three”—was

ready for them to vote on.³¹ The ball was in the Senate’s court, as the upper chamber stayed in session and worked to put together an enormous economic rescue package.

To start negotiations, Senate Majority Leader McConnell introduced a bill, S. 3548, on March 19, with a headline value of \$1 trillion. It featured a direct payment of \$1,200 to all American adults, phasing out for those with salaries greater than \$99,000; a \$500 payment for each child; \$300 billion in federally guaranteed loans for small business; and more than \$200 billion in support for struggling industries such as airlines. Although they agreed on many of the fundamentals, Democrats quickly protested that they had had almost no input in shaping this huge bill and began working on their own alternative, which would be introduced as H.R. 6379, the Take Responsibility for Workers and Families Act, on March 23.

McConnell made it clear that his proposal was meant as a starting point and assigned five bipartisan task forces to continue to develop the plan.³² By Sunday, March 22, a revised bill had been crafted with bipartisan input and introduced as an amendment to H.R. 748 (an unrelated bill previously passed by the House). But Democrats still felt it lacked sufficient support for schools and hospitals and characterized the money it made available to support industries as a “slush fund.”³³

McConnell nevertheless sought to move directly into debating that bill, but a cloture vote on his motion to proceed failed 47–47, well short of the 60 votes needed. Hoping to put the blame for the delay on Democrats, the next day he once again made a motion to proceed, only to lose again, 49–46.³⁴ With that procedural avenue having been foreclosed, the Senate would be committed to waiting until the end of the week to move forward—unless it could arrange a compromise that the whole body would agree by unanimous consent to consider.³⁵ For a moment, it looked like the divide between the parties might be unbridgeable, and markets responded by falling to their lowest levels in years.³⁶

Many Democrats worried that the Treasury secretary was being given a huge sum of money for emergency loans to some of America’s largest corporations,

including the major airlines, without sufficient accountability. What was to prevent businesses from taking the government's cheap money and essentially using it to enrich their shareholders? A prohibition against stock buybacks seemed insufficiently strict, as did a requirement that firms taking money would refrain from laying off their workers.³⁷

Democrats also said the \$1.8 trillion bill on offer was not big enough. Some of their demands, including that recipients of federal aid adopt a \$15 minimum wage and formal requirements for corporate board diversity and that student loan forgiveness be part of the package, attracted widespread derision from Senate Republicans.

That Monday afternoon and evening, as senators took to the floor to denounce the opposing party, negotiations continued that included Speaker of the House Nancy Pelosi and Treasury Secretary Steven Mnuchin. A deal was struck sometime after midnight, uniting leaders of both parties behind quick passage of the bill, which became inevitable unless large numbers of rank-and-file members decided they had some reason to abandon the compromise and risk the wrath of markets once again. That never happened, but the road to final passage was not without some drama.

In the Senate, four Republican members sought to delay the bill because of a concern that its generous unemployment benefits would discourage work among low-wage workers. To satisfy them, on Wednesday afternoon, McConnell arranged for the chamber to consider an amendment by Sen. Ben Sasse (R-NE) that would prohibit payments higher than the recipient's earlier wages. After some substantive debate, it failed on a party-line vote, 48–48.³⁸

Senate debate was largely filled with competing partisan claims about who deserved credit; Democrats emphasized there would be no relief for hospitals if not for their interventions, while Republicans said that Democrats had delayed passage without real justification. The Senate then passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act, as embodied in an amendment submitted by McConnell, 96–0, and promptly adjourned until April 20, leaving the House to also agree to the bill without amendment.

To speed the bill's passage, Speaker Pelosi hoped to pass it by unanimous consent. That way, many of the legislators who had returned to their districts would not have to travel back to Washington. But Rep. Thomas Massie (R-KY) frustrated this desire by signaling his intent to object, forcing the House to proceed through other procedures. On the morning of Friday, March 27, the House passed a resolution taking up the bill and allotting three hours of debate, divided equally between the two parties.

A few Republicans complained about particular spending items included, such as support for the Kennedy Center in Washington, which they said had no place in an economic relief bill.³⁹ Others worried about the enormous size. A few progressives said they regretted the level of support going to corporate interests; Rep. Alexandria Ocasio-Cortez (D-NY) lamented that the Senate had crafted “one of the largest corporate bailouts with as few strings as possible in American history.”⁴⁰ But these complaints were overwhelmed by members expressing their gratitude and institutional pride that Congress had moved so quickly and done so much.⁴¹

When the House moved to pass the bill as amended by the Senate, it proceeded by voice vote. Massie then came forward: “I came here to make sure our republic doesn't die by unanimous consent in an empty chamber, and I request a recorded vote.” His motion, however, lacked sufficient support (one-fifth of members present would have been necessary) and therefore failed. By unrecorded voice vote, with members socially distanced throughout the chamber (including the galleries normally reserved for press and spectators), the “ayes” carried the motion to pass the bill. Massie again objected, suggesting that a quorum of legislators was not present, but the chair announced that a quorum was present, leaving the vote to stand. Massie's colleagues were furious at his actions, as was President Trump, who called on Kentucky voters to vote Massie out in the fall election.⁴²

As with the earlier legislation, once the CARES Act had passed, congressional leaders regarded their accomplishment with some pride. “We packed months of legislative process into five days,” Schumer declared ahead of the vote. McConnell concurred.

“We pivoted from impeachment to 100 to nothing on this rescue package. This is about as flawless as you could possibly be.”⁴³ What, exactly, had they wrought?

What had negotiation and deliberation accomplished? Rather than taking some of Democrats’ priorities instead of Republican ones, the CARES Act became a massive agglomeration of both. McConnell’s original \$1 trillion proposal doubled to approximately \$2.2 trillion, making it by far the largest supplemental spending bill in the country’s history. A complete explication of its content is beyond the scope of this report, but major provisions include:

- \$500 billion to support loans to distressed industries, to be orchestrated by the Treasury secretary and (in many cases) executed by the Federal Reserve, of which \$46 billion is targeted directly at airlines and businesses crucial to national security (recipients of this aid become subject to restrictions on executive compensation, stock buybacks, and dividends; two oversight bodies, the Office of the Special Inspector General for Pandemic Recovery and a Congressional Oversight Commission, are created to prevent abuse; and \$80 million is dedicated to PRAC within the Council of the Inspectors General on Integrity and Efficiency);
- \$349 billion for the Paycheck Protection Program (PPP), which offers loans to small businesses that are forgivable if used to maintain payrolls;
- \$260 billion in increased unemployment benefits, with the federal government adding \$600 per week on top of existing state payments and expanding eligibility and lengthening benefits;
- \$50 billion in direct appropriations to support a wide variety of interests, including agricultural producers and transportation workers;
- \$300 billion to provide \$1,200 checks to all Americans earning less than \$75,000, with phaseout up to \$99,000 for individuals and corresponding amounts for other filers;

- Some \$150 billion to support provision of public health, including \$100 billion for hospitals and major investments in the nation’s stockpile of personal protective equipment; and
- \$150 billion in aid to state, territorial, and tribal governments.

The law’s largest industrial loan program ended up with more stringent controls than had originally been proposed. In a deliberate jab at President Trump and his family, the law also included a provision to exclude from eligibility all companies in which the president, vice president, head of an executive department, members of Congress, or immediate family members of such persons held a controlling interest. Democrats explicitly looked back at the country’s experience with the Troubled Asset Relief Program (TARP) in 2008 as they sought to ensure that government funds would not simply enrich those corporate executives least in need of support. The oversight bodies created were modeled on those created during the financial crisis.

It is worth briefly noting how much that earlier experience shaped America’s March 2020 crisis response, despite the major differences between a crisis with banking failures at its heart and an economic crisis brought on by a deadly virus and the public health measures taken in response to it.⁴⁴ The Federal Reserve had already, beginning in early March, created (or, in many cases, reopened) various emergency lending facilities meant to stabilize the nation’s debt markets.⁴⁵ Treasury Secretary Mnuchin gave his full backing to these facilities, including by pledging to use the Exchange Stabilization Fund to absorb any losses that the Fed might experience. The CARES Act endorsed and expanded this relationship, replacing the Exchange Stabilization Fund with a much larger pot of \$454 billion.

Together, the Treasury secretary and Fed chair wielded an incredible amount of discretion in allocating this money to prop up the economy. For all the anger inspired by the bailouts of 2008, TARP’s generally poor reputation, and the concerns about President Trump and his antidemocratic ambitions,

overwhelming bipartisan majorities in Congress once again chose to empower the executive branch. At the time, a few observers worried that Congress had given the Treasury and Fed the ability to crowd out private capital allocation in the economy, but that concern was not echoed in Congress (and, as we shall see, was not borne out in practice).⁴⁶

Given that both parties were able to get behind this rescue package so unreservedly, we might suppose that the political configuration in power at the time was not particularly important—that is, the American system was bound to engineer this sort of response to a crisis of this magnitude. Recall, however, that, despite the desperate support of congressional leaders of both parties, the House voted down the first version of TARP on September 29, 2008. Only after the market dove in response did the Senate pass a revised version and the House give its assent.

It is possible, then, to see the CARES Act's smooth passage as attributable largely to President Trump's ability to bring traditionally anti-spending conservatives along.⁴⁷ At least during the Trump administration, there would be no new Tea Party. Indeed, despite plenty of serious concerns about fraud,⁴⁸ especially in the unemployment payments, there was remarkably little backlash to the government's CARES Act spending.

Paycheck Protection Program and Health Care Enhancement Act (Signed April 24, 2020).

Indeed, one part of the CARES Act proved so popular that the considerable resources that had originally been allotted to it rapidly came to seem insufficient. The PPP, which funneled federal dollars to ordinary workers by means of forgivable loans to their employers, experienced a few hiccups in its first days, as the Small Business Administration had trouble finding enough banks to arrange the loans for a fee of 0.5 percent. Once it upped the fee to 1.0 percent, however, and once American small business owners realized they were essentially being offered free money if only they would take it, the \$349 billion from the CARES Act was running out by the middle of April.⁴⁹ Without much fanfare, Mnuchin and congressional Democrats once again negotiated, producing a

\$484 billion bill whose main purpose was to refund the PPP (\$310 billion) but which also made substantial allocations to hospitals (\$75 billion), emergency disaster grants and loans (\$60 billion), and COVID-19 testing (\$25 billion).

Democrats once again took credit for the health care-directed spending. Schumer declared that with their contribution the law “includes \$100 billion in money to fight the coronavirus itself” and signaled that his party expected another even bigger relief bill to come in turn.⁵⁰ With just a small fraction of the body in attendance, the Senate passed the bill by voice vote on April 21—just hours after the agreement was confirmed and less than two hours after its text became available.⁵¹ House members, on the other hand, returned to Washington to debate the bill and cast a recorded vote two days later. After some back-and-forth accusations as to which side had been holding the bill's passage up, and after Democrats emphasized that they felt health care needs were still being neglected, the bill passed 388–5.

So ended the period of bipartisan good feelings in combating COVID-19, especially in mitigating the toll on the economy. By means of deals worked out through their leadership in cooperation with the Treasury secretary—a process that left some sore feelings⁵²—Congress had tapped into America's fiscal capacity as it seldom had previously in the country's history. It provided money to support direct public health efforts, with an estimated quarter-trillion dollars in supplemental spending⁵³; support struggling industries and workers, both in and out of jobs; prevent state finances from eroding; expand the existing safety net; and serve hundreds of other purposes, besides.

Although demands for the next round of relief legislation followed instantaneously after the passage of the April law, many lawmakers (especially Republicans) made it clear that they felt they had done enough. They may have had a point, considering the remarkable fact that Americans' disposable income actually rose in 2020 and food insecurity remained level, despite massive job losses.⁵⁴ Plenty of different groups had trouble accessing dollars they believed would help them combat COVID-19 and its

effects, but this was largely a function of administrative bottlenecks rather than an absence of available federal funds.⁵⁵ Evaluating the success of these laws will require time; if they initiated a round of serious and destructive inflation that proves difficult to end, we will think very differently about the relief they afforded in 2020 and 2021.

Disappearing Act: Summer and Fall 2020

Whatever one thinks of the merits of the laws Congress passed in March and April, the legislature unquestionably demonstrated an impressive ability to make things happen. That pattern abruptly ended, however. From May until December 2020, Congress passed just a few small and uncontroversial bills related to the COVID-19 emergency.⁵⁶

After its unanimous passage of the CARES Act, Sen. Dan Sullivan (R-AK) cheered the chamber's work but lamented that senators were going to take a 30-day recess. "Because if there's one thing about this crisis that we've already seen is that new challenges pop up every day, every minute, every hour," he said.⁵⁷ Notwithstanding that concern, lawmakers' presence on Capitol Hill was rarer than usual.

In the House, although leadership was initially skeptical, on May 15, Democrats put forth a resolution to adopt proxy voting for the chamber, allowing members to designate a proxy who could cast their vote in their absence.⁵⁸ The Rules Committee held nine hours of meetings to work out the details of these rules and a brief debate on the House floor. Republicans proclaimed that bringing people together for in-person interaction is at the heart of representative democracy—as Rep. Tom McClintock (R-CA) said, "The word 'congress' literally means the act of coming together and meeting"⁵⁹—and that the proxy voting regime would seriously jeopardize the chamber's social dynamics. They also questioned the move's constitutionality. Democrats insisted that protecting the health and safety of members and staff made the move necessary, and they carried the day.

Initially set to last 45 days, proxy voting has been repeatedly extended through to the present, with

little sign of it going away. Indeed, although Republicans were initially unified in their opposition to the practice and even brought an (unsuccessful) lawsuit against it,⁶⁰ members of both parties have increasingly relied on the system.⁶¹ Meanwhile, a fierce debate over properly health-conscious rules of conduct on Capitol Hill itself became a microcosm of the national debate.

On the legislative front, both chambers were active in framing what was billed as "the next" big relief bill, with expiration of federal support for unemployment insurance expected to bring both sides to the table. But whereas the FFCRA had been primarily crafted by the House and accepted in the Senate, and the CARES Act had been primarily written in the Senate and accepted in the House, over the summer both chambers endeavored to frame the starting point of the next relief law. The two parties started from radically different places.

On May 15, 2020, on a 208–199 vote mostly along party lines (one Republican in favor, 14 Democrats opposed), Democrats pushed through their opening bid in the form of the Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act, which contained a whopping \$3 trillion in spending billed as extending COVID-19 relief.⁶² Republicans, however, claimed the package merely dressed up Democratic agenda items as responses to COVID-19 and were adamantly opposed to it from the beginning.

In the Senate, after it became clear that negotiations between Democrats and the White House were not leading to a compromise, Republicans assembled a much more modest package in July. They assembled several bills into a package, collectively known as the Health, Economic Assistance, Liability Protection, and Schools (HEALS) Act, which contained some \$1.1 trillion in spending and a liability protection for businesses, which Republicans emphasized was a must for them in any compromise legislation.⁶³ Republicans had difficulty coming to terms even with the White House, however. In August they presented a "skinny" version of the HEALS package, hoping to find some core that all parties could agree on.⁶⁴ But in the end, no large-scale agreement was forthcoming.

Except for the minor bills listed in the notes, Congress was also unable to move any small- or medium-size legislation targeted directly to specific defects in the federal government's COVID-19 response. Some members did try; a number of bills meant to improve the rather half-hearted contact-tracing efforts around the country circulated in the House and seemed to gain traction, but none ultimately moved.⁶⁵ The House passed a bill that would have bulked up the Strategic National Stockpile meant to ensure availability of personal protective equipment in September, but the Senate did not take it up.⁶⁶ Several other minor bills also made it through the House.⁶⁷

Another pattern also clearly emerged during this time: Partisan bills passed for messaging purposes were branded as driven by COVID-19. In July, the House passed a major expansion of childcare funding and branded it as needed to help Americans return to the workforce amid widespread school closures.⁶⁸ In August, they passed a bill to require continuity in all Postal Service operations during the pandemic, which was generally understood as responding to concerns that the Trump administration would somehow manipulate mail service to disadvantage mail-in voting.⁶⁹ In September, the House passed a resolution condemning anti-Asian discrimination and acts related to COVID-19, calling on federal law enforcement to help counteract it, which again was widely interpreted as a swipe at the president.⁷⁰

To cap off the preelection season of legislative inaction and seeking to emphasize their eagerness to get more dollars into American voters' hands, House Democrats revised the HEROES Act and passed it again, 214–207, on October 1, with a somewhat reduced \$2.2 trillion price tag.⁷¹ Although many commentators were amazed that Republicans would not agree to more massive spending (including checks for individuals) ahead of a close election featuring their own incumbent president, there is little sign that negotiations between the parties were ever close to bearing fruit.

Seeing Congress was unable to move the policy needle during this period, the Trump administration stepped in to act with a series of four executive

actions in August 2020: (1) an extension of an eviction moratorium put in place by the CDC that had been sanctioned by the CARES Act for 120 days but which Trump announced would be extended further⁷²; (2) a deferral of student loan payments; (3) a commitment to continue federal support for increased unemployment payments, previously \$600 per week under the CARES Act, at a level of \$400 per week, using money allocated to the Federal Emergency Management Agency; and (4) a rule change allowing individual tax filers to defer their payroll tax payments until 2021, with the announced hope that Congress might forgive these payments later.⁷³ The public mostly ignored this payroll tax change.⁷⁴ The eviction moratorium would be continued by the Biden administration and eventually find its way to the Supreme Court, which made it clear that it was based on dubious constitutional authority and, eventually, stayed the policy.⁷⁵ Far from questioning why the administration was circumventing Congress, many legislators (including the Republicans on the House Ways and Means Committee) cheered on executive action.⁷⁶

Congress received plenty of criticism during this period, mostly from people who felt it should have been quicker to push more money out the door to Americans in need. As many Americans saw it, that was Congress' pandemic role, and the institution was failing to perform it in the summer and fall. But, a few legislative proposals to increase testing or contact tracing notwithstanding, Congress also did remarkably little to address Americans' on-the-ground struggle to live with COVID-19, a failure that received much less attention. To some extent, American federalism made this failure understandable; due to the nature of our constitutional system, most public health authorities formally reside in the states rather than in the federal government.⁷⁷ But this was a truly national and international crisis, and a well-functioning Congress should have realized that national-level approaches were necessary given the certainty of transmission between states. (For more on this theme, see the section on congressional deference in part two.)

As Congress failed to act, an unusually nasty presidential campaign unfolded. As the Democratic challenger, Biden, told it, the president and

his administration were almost singularly blame-worthy for the pandemic. If only they had “followed the science” and avoided “politicizing” public health responses to COVID-19, America could have been spared its suffering—a dubious assertion given many European nations’ struggles with the virus at that time.

Trump, on the other hand, had turned decisively against much of America’s public health establishment, accusing it of pushing unduly burdensome restrictions to tank the country’s economy and his election chances. Given this backdrop, it is hardly surprising that public confidence in the CDC fell significantly from April to September.⁷⁸ Sen. Kamala Harris (D-CA), the Democratic candidate for vice president, may have been speaking for many when she said, in her debate with Vice President Mike Pence, “If Donald Trump tells us that we should take [a vaccine], I’m not taking it.”⁷⁹ What would be one of America’s signal accomplishments of the COVID-19 era was being politicized before it could even come to fruition.

A Second Wave of Economic Relief: December 2020–March 2021

Congress at least found a path back to its role as fiscal provider in December. With the election behind them, a bipartisan group of relatively centrist senators negotiated the outlines of a roughly \$900 billion spending package, which would include another round of economic relief checks, additional federal support for unemployment payments, a liability shield for corporations acting in good faith to prevent the spread of COVID-19, and money for schools and local government.⁸⁰

Although leaders on both sides initially expressed some skepticism, they were soon negotiating to secure inclusion of the relief bill in the omnibus spending law that had to be passed that month to avert a government shutdown. They eventually succeeded, after having to pass four continuing resolutions in a row to allow negotiations to proceed as successive deadlines arrived.⁸¹

Consolidated Appropriations Act, 2021 (Signed December 27, 2020). At 5,593 pages, the resulting law was the longest statutory enactment in American history.⁸² It passed both chambers on December 21, with votes of 359–53 and 92–6.⁸³ Summarizing all its provisions, many of which had nothing to do with COVID-19, is beyond the scope of this report, but it is worth listing some of the major pandemic relief provisions, many of which are clearly sequels to provisions in the CARES Act⁸⁴:

- \$600 individual payments to all adults, with phaseout for earnings over \$75,000;
- A renewal of federal unemployment bonuses, consisting of \$300 per week on top of state programs;
- \$10 billion for childcare providers, \$54 billion for K–12 schools, and \$23 billion for higher education;
- \$13 billion for expanded food stamp benefits;
- \$285 billion to renew the PPP small business loans program, this time with somewhat stricter requirements for participation;
- \$20 billion for purchasing and \$8 billion for distributing vaccines, \$20 billion to support states’ test-and-trace programs, and some \$20 billion for other public health spending; and
- An extension of the eviction moratorium through January 31.

The bill did not include any federal liability shield, as Republicans agreed to pursue that policy through another bill (which ultimately never gained traction).⁸⁵

Two controversies surrounding the bill are worth noting. First, Sen. Pat Toomey (R-PA) unexpectedly slowed down the final stages of negotiations by demanding inclusion of a provision that would explicitly deprive the Federal Reserve of some of the powers conferred to it by the CARES Act. Toomey’s worry was

that the Fed could use its leftover pandemic-fighting authority to become a lender of “first resort” rather than reliably performing its lender of last resort function.⁸⁶ But his demands struck some Democrats as going well beyond a restoration of the pre-CARES Act status quo ante into a more ambitious reduction of the Fed’s authorities.⁸⁷

Toomey’s December demand came a month after Treasury Secretary Mnuchin took steps to ensure that CARES Act money unused by the Fed would be returned to the Treasury on December 31—the statutory expiration date, although the law was unclear as to whether funds at the disposal of the Fed’s programs actually had to be returned at that time.⁸⁸ Democrats saw the move as a way to deprive the next administration of tools it might need to keep fighting pandemic-related economic woes; Mnuchin, Toomey, and other Republicans said that if a dire emergency arose, Congress could once again move quickly to empower the Fed as necessary.⁸⁹

In the end, Toomey and Democrats compromised on a fairly narrow limitation, which would prevent the Fed from rebooting five of the facilities created with support from the CARES Act in 2020. Most of the facilities had seen relatively little use, and \$455 billion was returned to the Treasury. On this one front, at least, concerns that pandemic policy would act as a springboard for a much broader permanent role for government were put to rest.

A second controversy that nearly derailed the bill was the question of the size of the checks to be sent to all American adults. Democrats sought to build on the CARES Act’s payments of \$1,200 with a new \$2,000, and they soon recruited President Trump, by then a lame duck, to their cause. Congressional Republicans, including in leadership, were not eager to give out any more than \$600 this time around, however, and the bill as they passed it contained only that. Much to their surprise, President Trump then said he was considering vetoing the bill, citing the insufficient size of the relief checks and a failure to include two other provisions he now wanted to insist on. The two provisions were an inquiry into the integrity of the election just concluded and a revocation of Section 230 of the Communications Decency Act, which shielded social

media companies from litigation and, he believed, allowed them inappropriate power to shape political contests. For several days, Trump withheld his signature, and, although his veto could be overridden (as it would be for that year’s defense authorization bill), because of the timing of the bill’s passage, he could effect a pocket veto simply by not acting, thereby creating a government shutdown.

As the nation awaited Trump’s decision, his demand for larger checks came to dominate the runoff election campaigns for Georgia’s two Senate seats, which would take place on January 5, 2021. The incumbent Republicans, David Perdue and Kelly Loeffler, had originally defended the smaller payments, but since both were running as Trump loyalists and their Democratic opponents, John Ossoff and Raphael Warnock, were hammering them with Trump’s demand, they soon began casting themselves as champions of \$2,000. A strange coalition was emerging for immediate action, before the 116th Congress came to an end on January 3.

Complicating this political dynamic further, Trump then signed the bill into law on December 27, issuing a statement noting that he was “demanding many rescissions” of what he considered wasteful spending in the law and throwing his support behind an immanent House effort to increase the check size to \$2,000 before they could be sent out at the smaller \$600 size.⁹⁰ Indeed, on December 28, the House passed a short bill that would do just that, 275–134, with 44 Republicans joining all but two Democrats in the majority.⁹¹ The bill had an apt title, reflecting the COVID-19-fighting role that Congress had come to prefer: the Caring for Americans with Supplemental Help Act, or CASH.

CASH did not rule everything around it, however, as McConnell did not feel obliged to play along. The Senate, he insisted, would reject providing “another fire hose of borrowed money,” including for the best off, and would focus on ways to provide more targeted relief. With Perdue and Loeffler getting bashed over the issue, he did concede that the Senate would be willing to consider a bill that addressed all three of Trump’s objections to the December act in a single bill. That was not much of a concession, though, since

he knew that Democrats would flatly refuse Trump's other two demands.

Sen. Bernie Sanders (I-VT) and his allies sought to mount a filibuster of the defense authorization veto override until they received a vote on the \$2,000 checks alone, but that effort failed.⁹² No change would be coming before the end of the Congress.⁹³ Given strong public support for the larger checks, this was an embarrassment for Perdue and Loeffler as their campaigns drew to a close. They were both defeated on January 5, which led to Democratic control of the Senate once Vice President Harris was sworn in later that month. It was a new administration's and a new Congress' turn to grapple with COVID-19.

American Rescue Plan Act (Signed March 11, 2021). In January 2009, Biden became vice president in the midst of a serious economic crisis, and he was part of a team that pushed an \$800 billion economic stimulus bill through a Democratic Congress within a month with only three Republican votes. Twelve years later, having been sworn in as president, he was determined to repeat that accomplishment. Working in close cooperation with Pelosi and Schumer, who was now the majority leader, he nearly did so. Just seven weeks after Biden's inauguration, Democrats used budget reconciliation to push through their \$1.9 trillion rescue plan, this time without any Republican votes.

Once again, summarizing the major provisions of the Rescue Plan Act is beyond the scope of this report. Critics of the law emphasized that, far from being a targeted rescue plan, it represented a giveaway to favored interest groups, especially state and local governments that claimed to need more money because of the pandemic but had already received some \$360 billion in aid in earlier relief bills that made their further need questionable.⁹⁴ Nevertheless, the law did contain considerable pandemic-related funds, most of which again extended earlier efforts, including⁹⁵:

- \$362 billion for state and local government "recovery funds";
- \$166 billion for an Education Stabilization Fund that would help schools reopen safely and

\$6 billion to keep providing free lunches to students whose access was cut off by COVID-19;

- \$400 billion for another round of checks to individuals, this time \$1,400—an amount that, together with the December law's \$600, was said to fulfill the earlier pledge for \$2,000, although some legislators made a push for an additional \$2,000;
- \$195 billion to once again extend federal unemployment aid, with \$300 per week bonuses running through September 6, 2021;
- \$7.25 billion more for the PPP, which was extended through May 31, 2021;
- \$34 billion for a temporary child tax credit, sometimes billed as a form of pandemic relief and sometimes put forward as the first step in an important expansion of America's permanent safety net;
- \$21 billion to help renters and \$10 billion to help homeowners;
- \$86 billion for health spending, with state and local governments receiving roughly \$48 billion in grants to support testing and \$7.5 billion more for vaccine administration; and
- \$50 billion to replenish the Federal Emergency Management Agency's disaster relief fund.

Cash ruled, even if a few months after its proponents originally hoped.

Because the COVID-19 crisis was so much more frightening and immediate in March, it can be easy to overlook the later spending bills. But these two enormous enactments, which combined pandemic relief, public health dollars, and a host of miscellaneous priorities, nevertheless showed that Congress was still capable of action.

The political dynamics of these bills were quite different than with the earlier crop. Whereas leadership

had been able to more or less dictate terms back in March and April, the December bill was brokered by moderate senators from both sides of the aisle, only to be shepherded into law by bipartisan leadership working in cooperation with the White House as late objections threatened to sink it.

The American Rescue Plan Act, on the other hand, hearkened back to the 111th Congress of 2009–10, which was able to push through Democratic priorities despite Republican intransigence. But whereas Democrats had 60 votes for a while in Barack Obama’s first term, allowing them to carry cloture motions and get to votes on their favored legislation, in Biden’s first term their bare majority of 50 senators plus the vice president meant they had to rely on budget reconciliation.

Since March, Congress has been remarkably inactive regarding COVID-19—notwithstanding that the virus has killed more than 200,000 Americans since the passage of the American Rescue Plan. Democrats have focused their energy on moving President Biden’s nominees through the Senate and assembling two mega bills to advance their agenda: the Infrastructure Investment and Jobs Act, negotiated on a bipartisan basis in the Senate, and the American Family Act of 2021, meant to unify Democrats behind another massive spending bill that could be passed, using budget reconciliation, without Republican votes. Each bill has required huge amounts of legislative attention, making it difficult for other matters to gain traction.

Just a few COVID-19-related provisions have found their way into these bills. The Infrastructure Investment and Jobs Act contains a short Make PPE in America Act, which requires that long-term contracts to produce personal protective equipment go to American firms. It also rescinds or repurposes tens of billions of dollars in previously obligated COVID-19 money.⁹⁶ The budget resolution meant to facilitate the reconciliation bill, on the other hand, found room in its \$3.5 trillion of notional commitments (none of which will be delivered on without further legislation) for more cash for bars and restaurants, hospitality, and hospitals. It also committed Democrats to holding the line against any increase in taxes on small businesses during the pandemic, provided more economic impact payments for individuals, supported states’ vaccine public awareness campaigns, and endorsed making more information about pandemic-related spending available online.⁹⁷

In other words, in its largest and most ambitious form, the Democrats’ mega bill promised to renew and deepen a few of the cash commitments of the CARES Act—nothing like a major overhaul of the federal government’s COVID-19 policy. Various other bills have circulated, and a few modest measures have even passed, but it does not seem that either party is focused on the issue.⁹⁸

As the section below on Congress’ tendency to defer to scientific agencies discusses, Congress’ unwillingness to blaze a new path on COVID-19 remains a puzzle when we consider the persistently high salience of COVID-19 throughout 2021.

II. Congressional Motivations— Analysis

Having laid out an account of Congress' COVID-19 actions in part one, part two turns a more critical eye on questions of what legislators were trying to achieve with their actions.

Congressional Oversight

To begin, it is worth briefly looking into Congress' nonlegislative involvement in COVID-19 policy by means of oversight hearings. Members in both chambers were eager to keep up with the executive branch's pandemic responses. To do so, they actively probed into the administrative details of the massive spending programs approved and regularly called executive branch leaders to testify on the Hill to address their concerns. That said, it is not easy to come up with examples in which congressional oversight decisively moved COVID-19 policy. In stark contrast to the oversight of the responses to the financial crisis of 2008, pandemic-era oversight brought forth few memorable scandals.

Nor did it lead to a major reform bill being advanced. Oversight activities during the financial crisis led to a proliferation of theories about what had gone wrong. For example, the Financial Crisis Inquiry Commission that Congress created identified dozens of factors that had left the financial system vulnerable. One might wonder if this approach was unfocused (the minority report of the commission did so and identified 10 primary causes), but in any case, it left the 111th Congress with a great deal to work with as it shaped a reform bill. The Dodd-Frank Act, passed in 2010, incorporated many of the theories and changed the regulatory landscape in countless ways.

Congress still has time to consider the failures of our pandemic preparations and frame a similarly ambitious reform bill. But it is distressing that legislators' considerable investments in oversight have, so far, not yielded a coherent push for a reform law.

Instead, as lawmakers watched many systems fail to arrest the spread of COVID-19 in early 2020, they reached for the lessons they had drawn from the financial crisis. As they drafted their rescue bills in March and April 2020, members of Congress worried especially about giving away taxpayer money to corporations, which had caused massive political backlash a decade earlier. Transferring that old impulse to the new context was always slightly awkward; whereas investment bankers could easily be cast as the villains during the financial crisis of the previous decade, the economic travails brought on by COVID-19 and the public health measures taken to combat it were not attributable to any corporate malfeasance. Corporations, large and small, appeared to be victims just as much as individuals were.

Nevertheless, Congress took care to ensure that accountability features were included in the new legislation. Specifically, it put into place the following features, the performance of each of which I discuss briefly.⁹⁹

Special Inspector General for Pandemic Recovery. Nominated by the president, confirmed by the Senate, and housed in the Treasury Department, this individual would be charged with auditing and investigating Treasury activity related to the CARES Act. An inspector general, Brian D. Miller, was confirmed to the office on June 2, 2020. As of May 2021, the office had 40 full-time employees working on combating fraud.

Unlike the Office of the Special Inspector General for the Troubled Asset Relief Program (SIGTARP), which issued a string of highly visible reports and gained a great deal of visibility in the years following 2008, the special inspector general for pandemic recovery made few waves. Apparently, he was shut out from some matters he believed were within his jurisdiction, butted heads with Biden administration officials at the Treasury Department and Department of Justice, and was slow to build a full staff.¹⁰⁰

Pandemic Response Accountability Committee.

Created by the CARES Act, this body brings together inspectors general from across the government to scrutinize distribution of funds under the act and make information available to the American public. PRAC has found evidence of massive fraud as CARES Act money went out the door, especially in the unemployment payments, with some states estimating 30 percent fraud in that program, much of it perpetrated by large-scale predatory organizations.¹⁰¹ The inspector general for the Small Business Administration estimates that roughly 5 percent of PPP claims were fraudulent.¹⁰² Together, this implies that tens of billions of taxpayer dollars went to criminals in 2020, a remarkably discouraging fact. Yet, although legislation has been introduced to tighten controls and aid recovery, this has not become a major political issue.¹⁰³

Congressional Oversight Commission. Once again following the 2008 example, the CARES Act also created a five-member commission to oversee Treasury's use of the \$500 billion allocated by the law to support Fed programs, with leaders in the House and Senate appointing members. But, unlike the commission led by Sen. Elizabeth Warren (D-MA), the pandemic-era institution turned out to be a non-starter. Four members were named to the commission: Rep. French Hill (R-AR), Sen. Toomey, Bharat Ramamurti (a former aide to Warren), and Rep. Donna Shalala (D-FL). But Pelosi and McConnell never agreed on a nominee for the chair position who was willing to serve,¹⁰⁴ nor did Schumer and Pelosi put forward a candidate once the Senate changed control.

Indeed, since May 2020, only Hill and Toomey remain on the commission, with Democrats putting forward no replacements. While the commission did hold a few hearings and issue monthly reports on the Treasury's loans to corporations, without a leader to act as a spokesperson, it was decidedly inconspicuous.¹⁰⁵

Select Subcommittee on the Coronavirus Crisis.

Finally, on April 23, 2020, the House voted to create a dedicated subcommittee on the House Committee on Oversight and Reform.¹⁰⁶ Showing this committee's stature, Pelosi appointed Majority Whip James Clyburn (D-SC) as its chair and three other committee chairwomen to its membership. Republicans had objected; for example, Rep. Doug LaMalfa (R-CA) said there was no need for a "duplicative, partisan select subcommittee to make a political spectacle of the virus."¹⁰⁷ Clyburn announced that the body would model itself on the Truman Committee, which famously oversaw domestic production issues during World War II. The committee was immediately active, and it has held more than a dozen hearings and briefings. During 2020, it was often perceived as a focal point for Democratic criticisms of the Trump administration's COVID-19 response, but it was also renewed in 2021 and has continued its work during the Biden administration, gaining some notoriety for its investigation of corporate landlords' eviction practices around the time that the eviction moratorium ended.¹⁰⁸

None of these oversight bodies managed to draw the attention of, for example, the SIGTARP's jaw-dropping report suggesting that the federal government's potential support could reach \$23.7 trillion or the Warren-led commission's attacks on the Treasury for failing to get a good enough deal for America's taxpayer when it took stakes in bailed-out banks.¹⁰⁹ They lacked a target nearly as juicy, but the American people's mood was also different in 2020. The daily impositions of pandemic restrictions were more likely to draw people's ire than were questions of where the government's money was going. And the vast majority of citizens found that at least a sizable chunk of that money was coming directly to them and their families, which likely reduced the sense that someone

else was unfairly getting ahead. Considering the enormous amounts of money paid out, the relatively apolitical reception for COVID-19 spending programs is nevertheless remarkable.

Why Did Congress Defer? Non-Pharmaceutical Interventions, Testing, and Vaccines

We now come to what is perhaps the crucial question in considering Congress' pandemic performance: What did legislators fail to do that they should have been doing? My contention is that they should have been working out compromises on the difficult questions surrounding non-pharmaceutical interventions, testing, and vaccines and been much less willing to defer to the judgments of existing government agencies, especially the CDC and the FDA, on these questions.

This may seem to be a counterintuitive position. Hadn't previous Congresses created expert bureaucracies precisely so they could lead in dealing with complicated issues of public health? If the generalists on Capitol Hill have no advantage over trained professionals in making sense of the pandemic, why would we wish for them to intrude into matters beyond their competency? Whatever trust issues bureaucrats ended up having, wouldn't they have been even worse if our legislators tried to settle such thorny issues?

This way of thinking misjudges how much can reasonably be crammed into the category of "public health" and fails to appreciate what politicians' comparative advantage is. Because they are representative and because they are forced to take in all manner of considerations, including *but not limited to* public health concerns, if they manage to broker compromises that win the backing of broad coalitions, those compromises can possess a degree of political legitimacy that decisions made by bureaucrats are unlikely to have. Some elements of their arrangements may well be suboptimal, when considered from the standpoint of a particular metric. But, when considered in light of holistic social cohesion, the fact that they are able to work through an issue and come to a mutually

acceptable accord is just as important as any particular outcome.

At the same time, their willingness to disregard a narrowly professional point of view is likely an asset when dealing with a novel phenomenon; bureaucrats are creatures of routines and believe in the integrity of those routines, even when an emerging threat raises the gains to departing from them and establishing a new way of acting. On some issues, it seems clear that the kinds of "outsider" concerns Congress brought to the table could have been a goad to better policy, even if it entailed taking some risks that the bureaucrats found unacceptable.

Let us make this more concrete by turning to specific examples.

Non-Pharmaceutical Interventions. Our first line of defense against COVID-19 was a set of behavioral techniques meant to reduce the opportunities for the virus to spread. These included mandatory closures of businesses, public facilities, and schools, generally with exemptions for "essential" workers, "stay-at-home" orders, social distancing requirements, and, eventually, mask mandates.

Given our constitutional structure, none of these policies can emanate directly from Congress or the federal government. State governments retain the primary responsibility for protecting public health, which they frequently delegate to local governmental units.¹¹⁰ That said, federal policymakers nevertheless played a decisive role in shaping these policies around the country, as local officials were mostly eager to defer to centralized expertise. "Following the CDC guidance" became a kind of mantra around the country, one that many in Congress were happy to endorse. Unfortunately, CDC guidance was often substantively flawed and presented in a garbled form that was anything but clarifying.

Masks provide an infamous example. In the pandemic's early days, the CDC infamously advised against masking before later changing its tune to recommend mandatory masking.¹¹¹ Congress was in no position to provide clarity on the science while the CDC's interpretation of the available evidence wobbled, but it could have pursued various compromises that might

have won broad backing. For instance, it might have considered sending American-manufactured masks to all households, as some in the Trump administration briefly sought to do. It might have emphasized that mask quality was something worth focusing on and sought to make N95 masks cheaply available to the public.¹¹²

Forging a coalition to support such actions might have required simultaneously discouraging mandatory masking, at least in some types of business environments, perhaps through some conditions on funding. Instead, with legislators rejecting compromise, masking became a yes-no partisan loyalty test, including in the Capitol itself; some treated the CDC's masking recommendations as sacrosanct, others as worthless.

School closures provide a less-remarked-on example in which compromise was possible but not energetically sought. After going all virtual (usually with little success) in the spring of 2020, many US schools reopened in person in late summer. Both public and private schools that reopened showed considerable ingenuity in altering their operations to maximize safety, including holding outdoor classes in many cases. As it poured out money to support school districts' adaptations to COVID-19, Congress could have incentivized such experimentation.

As they worked on their summer 2020 legislation, Republicans made some moves in this direction, seeking to tie money for schools to commitments to in-person reopenings, a theme some GOP senators continued to sound in the Biden administration.¹¹³ Even as GOP legislators were willing to provide money to support schools, however, they never found a way to effectively bargain with teachers unions or their allies. School reopening decisions ended up reflecting politics rather than on-the-ground COVID-19 conditions.¹¹⁴ Even worse, federal dollars to support schools ended up providing ammunition for intrastate fights over masking and other issues; in Arizona, the governor threatened to withhold relief money from any schools implementing mask mandates.¹¹⁵

Social distancing guidelines offer another example in which Congress made its unhappiness known but did not seem to take any actions to effect change.

At the beginning of the pandemic, the CDC operated under the assumption that COVID-19 was a droplet-spread disease. With that model taken as all but certain, imposing a strict distancing requirement on people made sense; large droplets of spit fall to the ground without traveling large distances. Even given this model, the CDC's promotion of six feet as some kind of magic number never made all that much sense. Even with droplets as the mechanism of spread, 10 feet would be safer than six, six safer than four, and so forth. But there can be some justification for uniformity in communications with the public, and the CDC was fiercely determined to maintain its recommendation of six feet in every domain.¹¹⁶

As we learned more about COVID-19, more evidence called droplet-based spread into question. Because of a long-standing dispute in the scientific world itself, there was a great deal of resistance to accepting what we now know to be true: that COVID-19 is an airborne disease, which through tiny aerosol particles can stay in the air for significant periods.¹¹⁷ The CDC, however, was slow to even acknowledge that as a possibility. It confusingly changed its website to admit aerosolized spread as a possibility in September 2020, only to immediately retract the change, apparently because it had not gone through the proper bureaucratic channels. That led some members of Congress, including Sen. Tim Kaine (D-VA), to ask whether political interference was clouding the CDC's judgment.¹¹⁸ More generally, the CDC's credibility was suffering.¹¹⁹

Soon after, the CDC restored the change to its website, advising Americans that aerosolized spread was a mechanism of COVID-19's spread.¹²⁰ If airborne spread was the primary mechanism, then extra-thorough cleaning of surfaces was a waste, greater attention to ventilation was probably the key, and the fixation on six feet of social distancing did not make a tremendous amount of sense. Many of the CDC's recommendations needed updating, but they mostly remained the same; not until May 2021 would the CDC fully catch up with the science.¹²¹

And, even as the agency's reputation had sunk, many organizations around the country continued to treat its recommendations as sacrosanct, the most

authoritative guidance available. That meant that many schools went on believing that full reopenings were impossible, given the inability to ensure that students would remain six feet apart throughout their school days. Indeed, when it issued new recommendations for schools in early 2021 (now under the Biden administration), the CDC appeared to be continuing to emphasize actions such as cleaning that were unsupported by evidence and continuing to insist that six feet of distancing was completely necessary.¹²²

Members of Congress finally swung into action in response to this. In March, Rep. Virginia Foxx (R-NC), the ranking member of the House Education and Labor Committee, led a push to get the CDC to change its guidance such that it would actually be helping schools realize the goal of reopening, as President Biden said was his administration's goal.¹²³ That campaign paid off, quickly, with the CDC revising its guidance to recommend three feet of distancing for students on March 19.¹²⁴ Nevertheless, the CDC continued to make dubious representations about precautions needed outdoors and for children's summer camps. Sen. Susan Collins (R-ME) sharply questioned the CDC's director on these issues at a hearing in May 2021.¹²⁵

What is remarkable is how little Congress has translated its concerns into legislative proposals for reform. In the 117th Congress, various bills are circulating that would alter the CDC's authority by adding new responsibilities.¹²⁶ To this observer, that seems like the quintessence of failing upward. A few bills do seek to penalize the CDC, including Sen. Marco Rubio's (R-FL) Restore Public Health Institution Trust Act of 2021, which would require a Government Accountability Office review of the CDC's guidance.¹²⁷ But, although many might see the CDC's disastrous past year and a half as the perfect opportunity to overhaul a fundamentally dysfunctional agency and thereby better prepare the country for public health emergencies, Congress has not seen fit to pursue such ambitions, let alone debate them extensively.¹²⁸

Testing. When it comes to COVID-19 testing, the United States has consistently lagged its peers. That claim has sometimes been disputed, and we have lagged worse at some times than others. But by the

crucial metric of tests per case, the data are simply unambiguous that the United States has been a laggard.¹²⁹

The reasons for this testing failure are manifold, and almost all lie with the public health bureaucracy. The CDC infamously botched its effort to develop the country's first test in February 2020.¹³⁰ Then the FDA blocked decentralized innovation in developing an alternative test,¹³¹ refused to approve rapid at-home tests developed and manufactured by American companies because they do not meet the existing standards for medical devices, and failed to develop a more appropriate standard for public health tests.¹³² Bureaucrats also never managed to detach testing from our byzantine system of health care provision and billing.

Obviously, members of Congress were in no position to develop a COVID-19 diagnostic test or even figure out precise criteria for determining which tests were acceptably accurate. But it would nevertheless have been easy for them to improve America's testing efforts by demanding an answer to a simple question: Why are Americans so much worse off, in their access to tests, than Europeans or the British are?¹³³

Congress provided a great deal of funding to support states in their efforts to make COVID-19 testing widely available. But it did not relieve the states of the incredible burdens that our public health laws and regulations put on health-related enterprises. Nor did they take steps to ensure that low-cost or free tests would become available to consumers, as many other countries did.

These issues have not escaped legislators' attention. Rep. Kim Schrier (D-WA), a pediatrician, has been pushing the bureaucracy to make at-home tests more readily and cheaply available to consumers for many months.¹³⁴ But Congress as a whole has largely contented itself with providing more money. It should have instead tackled the real bottlenecks directly.

Vaccines. America's vaccine story is in many ways a happier one, so perhaps there is less to be desired from Congress' efforts. Thanks to massive public investment—supplied, quickly and without much difficulty, by Congress—and a thriving private-sector

capacity for drug development, the United States led the world in developing high-quality vaccines. Within about 14 months of the virus' arrival in force in America, enough vaccine doses were available for any American to get one, for free, usually at a pharmacy near their home. This miraculous success seemed all but impossible back in March 2020.

Yet there is still plenty to criticize. First, the FDA has often seemed oblivious to the costs of normal bureaucratic foot-dragging in a country losing thousands of lives each day to a deadly virus. In the fall of 2020, President Trump was assuring the nation that vaccines would become available imminently. But the FDA stretched out the data collection process with Pfizer, and the company waited until a week after the November election to release news of its spectacular success. After that release, more than four weeks passed before the FDA granted an Emergency Use Authorization, during which time the most severe wave of the virus to date was spreading. For outsiders, the delay was utterly incomprehensible. Then, throughout 2021, when it was clear that both the Pfizer and Moderna shots had the agency's full confidence, it was unclear why it was withholding its full approval of these vaccines.

Meanwhile, AstraZeneca, a vaccine that received regulatory approval in the UK and EU, and which a Baltimore manufacturing facility produced, never received regulatory approval for use in the US.¹³⁵ The FDA claims this was because the manufacturer failed to get its paperwork right—but it seems not to have realized what a terrible excuse that was, given the circumstances and that the US was actively shipping the vaccine abroad to help other countries struggling with COVID-19.

At a more fundamental level, it should give us pause that the vaccines were—again, miraculously—developed within days of the drug companies receiving the gene sequencing of the SARS-CoV-2 virus, all the way back in January 2020, before a single American ever died.¹³⁶ Obviously, it would have been inappropriate to skip safety and efficacy testing before making a vaccine available to the public, and obviously synthesizing small quantities in a lab is very different than producing at scale. Still, it seems reasonable to ask whether

we could have created a novel pandemic-specific approval process for these drugs rather than hewing so faithfully to our normal procedures, possibly providing much of the public access to the vaccines before the awful winter 2020–21 wave. Such an accelerated process might include human challenge trials, in which healthy adults volunteer to be infected with the virus after receiving the vaccine. While controversial, these were eventually used in the United Kingdom as part of its vaccine testing, and most ethicists agree they are appropriate.¹³⁷

Two bills currently circulating in Congress would try to provide Americans quicker access to vaccines in the case of a future pandemic. The Promising Pathway Act would make it easier for patients to gain access to potentially lifesaving drugs before those drugs receive full FDA approval.¹³⁸ The Accelerated Drug Approval for Prescription Therapies Act would allow drugs already approved by other developed countries to be fast-tracked for FDA approval.¹³⁹ But FDA reform does not seem to be high on congressional leaders' agenda (as opposed to drug pricing, which clearly is). If these bills continue to languish, Congress will once again be missing an opportunity to learn from our pandemic experience and take responsibility for ensuring that we do better next time.

Given that the federal government provided the resources to support the vaccine rollout, it might well have been better for Congress to work through the difficult questions relating to who became eligible for shots first. The CDC recommended that scarce shots be allocated first to health care personnel and nursing home residents, then to Americans age 75 and older and “essential workers,” an elaborately defined and politically contestable category.¹⁴⁰

States, however, exercised a free hand in determining who would be eligible for the vaccine. They sometimes made shots available for people with different health conditions or potential comorbidities.¹⁴¹ In some places, to combat racial inequities in vaccination rates, they even created explicit race-based priorities.¹⁴² Setting these parameters often created bitter resentments and contributed to the sense that the public health establishment was being given political powers that far exceeded what their expertise

could really justify. A nationally legislated compromise might well have created a smoother path in the months of vaccine scarcity.

Another important vaccine issue is determining optimal dosage and timing of vaccines. Each vaccine was approved to be administered subject to a certain schedule that was chosen for the FDA's safety and efficacy testing. But those schedules—which varied considerably for the different vaccines—had not been proven medically or socially optimal in comparison to other possible ones, and the FDA proved remarkably incurious about potential alternatives. The United Kingdom pursued a “first doses first” strategy to speed up availability of at least one shot for all who sought to be vaccinated, and many argued for the merits of that strategy in the US, including seven Republican members of Congress, all medical doctors, who in March 2021 urged the HHS to consider it.¹⁴³ No headway was made at the time, although in the fall of 2021, the Biden administration did begin to allow more flexibility on the timing of booster shots.

Since vaccines have become superabundant in America, the political fight has shifted to whether governments, schools, and businesses can or should mandate that their employees (or their customers or students) receive the vaccine. In the fall of 2021, as President Biden announced that the Occupational Health and Safety Administration would move to require large employers to administer vaccine mandates, arguing about the justice and propriety of vaccine “passports” and mandates became a mainstay of

national politics, including for members of Congress. But there was no indication whatsoever that either side was interested in working out some kind of compromise that could de-escalate these issues.

What would such a compromise look like? Given that Biden and other Democrats see mandates as attractive ways of fighting the virus but undoubtedly recognize their political costliness, Republican skeptics of mandates might have figured out some other way to address their concerns. Since Democrats are focused on “barriers to access” for working-class Americans, there should have been an opening. “Maximize real choice for everyone” was a compromise frame that would have offered something for both sides, with a focus on sweeping away bureaucratic obstacles to fighting COVID-19, for both the individual (as with paperwork requirements or complicated medical billing or with access to drugs) and the community (as with projects to improve school ventilation, build up supplies of crucial equipment around the country, and ensure clinical capacity in all areas).

In part, such an agenda would have involved yet another round of dispersing cash. It also would have entailed trying to recognize the ways in which existing arrangements were failing and changing rules to break through bottlenecks. As of this writing, a few politicians have gestured at this way of conceptualizing the COVID-19 problem in its endemic phase, but none has sought to frame this as a way that our polarized political system could try to make peace.

III. Conclusion: Money Is Not the Problem or the Answer

The paradox of our pandemic politics is this: Our political system managed to produce huge bipartisan majorities to mobilize a response to the COVID-19 emergency, and it managed to spend unprecedented sums. In doing so, it helped fund some great efforts, including an unprecedented success in developing and rolling out a vaccine. Yet, our legislature seemed not to decide any of the divisive questions about COVID-19 that roiled the nation. Legislators had plenty of criticism for public health agencies that ended up as on-the-spot decision makers, but they did not actively seek to assert legislative responsibility for answering these questions. Indeed, through their various enactments, they tended to shovel more money into these same agencies and add to their remits.

We should be grateful that Congress was not, in fact, so dysfunctional as to choke off all federal action during the crisis. Massive federal deficit spending helped fend off a prolonged economic downturn and undoubtedly alleviated massive amounts of human suffering. Historic support for our public health efforts was entirely appropriate.

That said, some of Congress' spending under the heading of its COVID-19 response was not really about combating the virus. The American Rescue Plan's \$122 billion for schools is "*for sure* the largest one-time federal investment in public education in this country," according to Georgetown professor of education finance Marguerite Roza.¹⁴⁴ Some of that money will be spent on air filtration and testing to help keep schools open; some will be spent on educational programming to make up for students' lost time.

But—largely because of arcane federal disbursement laws—much of that money will not be spent

anytime soon. It will simply act as a boon for the educational sector, which might mean providing more money for teachers, swelling the ranks of paraprofessionals, or piling up computing equipment that is supposedly crucial to American students' educations. Other COVID-19 spending that did flow out in the short term is best understood in the context of a longer-term fight over the shape of American social welfare spending. The temporary child tax credit enacted as part of the American Rescue Plan, for example, was clearly intended to be made permanent at a later date, and with the innovation of having it paid out monthly, it was also intended to alter the on-the-ground politics of federal spending.¹⁴⁵

In other words, especially as the pandemic wore on, Congress began to use its relief bills as vessels for other priorities. Even as it did this, it failed to seek any kind of resolution on some of the most difficult political questions, ones that public health officials were poorly suited to handle. Former FDA Commissioner Scott Gottlieb, my AEI colleague, puts it this way: "I learned at the FDA that people are often willing to confront risks that they can adequately measure for themselves, but balk when forced to embrace risks that seem open-ended, ambiguous, or hard to measure."¹⁴⁶

Generalist representatives are best qualified to grapple with exactly these kinds of risks, because they can pull in the full variety of human concerns as they make their way through ambiguous situations. When such uncertainty is compounded by deep concerns about fairness and justice, the need for political leadership only deepens. Congress should have been the body to provide it—and still should be today.

Appendix

Table A1. Major COVID-19-Related Statutes, 2020–21

Bill Number	Title	Brief Description	Last Action	House Vote	Senate Vote
H.R. 6074	Coronavirus Preparedness and Response Supplemental Appropriations Act	\$8.3 billion supplemental spending devoted directly to pandemic response; included \$4 billion to develop vaccines and treatments, \$1.3 billion to assist pandemic fighting abroad, and \$1 billion for state and local governments	Signed into Law (March 6, 2020)	415–2	96–1
H.R. 6201	Families First Coronavirus Response Act	\$192 billion in additional spending over 10 years, mainly by expanding entitlements like paid family and sick leave, unemployment benefits, food stamps, school lunches, and Medicaid; guaranteed free testing and compensated businesses for increased leave	Signed into Law (March 18, 2020)	363–40	90–8
H.R. 748	Coronavirus Aid, Relief, and Economic Security (CARES) Act	\$2.2 trillion in total spending to rescue the economy; included hundreds of billions in loans to businesses, federal unemployment assistance of \$600 per week, \$1,200 checks to individual Americans, significant support for hospitals, and additional spending for public health and local governments	Signed into Law (March 27, 2020)	419–6	96–0
H.R. 266	Paycheck Protection Program and Health Care Enhancement Act	\$484 billion bill that primarily kept the Paycheck Protection Program funded but also provided additional money to the public health sector	Signed into Law (April 24, 2020)	388–5	Voice Vote
H.R. 6800	Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act	\$3 trillion in additional spending, including another round of \$1,200 checks, renewal of expanded unemployment benefits, increased aid to state and local governments, and rental assistance	Passed House (May 15, 2020)	208–199	None
S. 4317, S. 4318, S. 4319, S. 4320, S. 4321, S. 4322, S. 4323, and S. 4324	Health, Economic Assistance, Liability Protection and Schools Act	\$1.1 trillion in spending, including an additional round of \$1,200 checks but with a reduction of the federal unemployment supplement to \$200 per week; also includes liability protection for businesses		None	None
H.R. 925	HEROES Act (Revised Version)	Total spending reduced to \$2.2 trillion; largely the same set of programs but with shortened time frames to reduce costs	Passed House (October 1, 2020)	214–207	None
H.R. 133	Consolidated Appropriations Act, 2021	COVID-19 relief, totaling \$900 billion, passed alongside omnibus annual appropriations; includes \$600 checks, a renewed (but smaller) federal unemployment supplement of \$300 per week, a renewal of the Paycheck Protection Program, and an assortment of public health funding, including for vaccine rollout	Signed into Law (December 27, 2020)	359–53	92–6
H.R. 1319	American Rescue Plan Act of 2021	\$1.9 trillion in spending, including hundreds of billions for state and local governments and schools, \$1,400 checks, \$300 per week unemployment bonuses, and a temporary child tax credit	Signed into Law (March 11, 2021)	219–212	50–49

Source: Author.

About the Author

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Notes

1. Specifically, it was Bill Clinton's reading of a novel featuring a bioweapon attack on New York City (Richard Preston's *The Cobra Event*, published 1997) that led him to propose expanding adding a new civilian stockpile in addition to military stockpiles that already existed. Olivia B. Waxman, "Coronavirus Is Putting the U.S. Strategic National Stockpile to the Test. Here's the Surprising Story Behind the Stash," *Time*, March 11, 2020, <https://time.com/5800393/coronavirus-national-stockpile-history/>.
2. Frank Gottron, "Project BioShield: Purposes and Authorities," Congressional Research Service, July 6, 2009, <https://fas.org/sgp/crs/terror/RS21507.pdf>.
3. Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006, H.R. 2863, 109th Cong. (2005), <https://www.congress.gov/bill/109th-congress/house-bill/2863>.
4. Jimmy Kolker, "The U.S. Government Was Not Adequately Prepared for Coronavirus at Home or Abroad," *American Diplomacy*, May 2020, <https://americandiplomacy.web.unc.edu/2020/05/the-u-s-government-was-not-adequately-prepared-for-coronavirus-at-home-or-abroad/>.
5. For a general treatment, see Rhea K. Farberman et al., *The Impact of Chronic Underfunding on America's Public Health System: Trends, Risks, and Recommendations*, 2020, Trust for America's Health, April 2020, <https://www.tfah.org/wp-content/uploads/2020/04/TFAH2020PublicHealthFunding.pdf>.
6. Rebecca Katz, Aurelia Attal-Juncqua, and Julie E. Fischer, "Funding Public Health Emergency Preparedness in the United States," *American Journal of Public Health* 107, supplement 2, no. S2 (2017): S150, <https://ajph.aphapublications.org/doi/pdfplus/10.2105/AJPH.2017.303956>. To her credit, Rep. Rosa DeLauro (D-CT) had been pushing a bill to fund the Public Health Emergency Fund at \$5 billion since 2016. See, for example, Rosa DeLauro, "DeLauro Reintroduces the Public Health Emergency Fund Act," press release, February 10, 2016, <https://delauro.house.gov/media-center/press-releases/delauro-reintroduces-public-health-emergency-fund-act>.
7. Yasmeen Abutaleb and Erica Werner, "HHS Notifies Congress That It May Tap Millions of Additional Dollars for Coronavirus Response," *Washington Post*, February 3, 2020, <https://www.washingtonpost.com/health/2020/02/03/hhs-notifies-congress-it-may-tap-millions-additional-dollars-coronavirus-response/>.
8. Jongeun You, "Lessons from South Korea's Covid-19 Policy Response," *American Review of Public Administration* 50 (August 2020): 801–8, <https://journals.sagepub.com/doi/full/10.1177/0275074020943708>; and Seokmin Lee and Tae-Ho Kim, "South Korea's Combating COVID-19 Under the Rule of Law," *Verfassungsblog*, April 8, 2021, <https://verfassungsblog.de/south-koreas-combating-covid-19-under-the-rule-of-law/>.
9. Sayuri Umeda, "South Korea: Parliament Responded Quickly to COVID-19 by Amending Three Acts," Library of Congress, Global Legal Monitor, June 4, 2020, <https://www.loc.gov/item/global-legal-monitor/2020-06-04/south-korea-parliament-responded-quickly-to-covid-19-by-amending-three-acts/>.
10. 166 Cong. Rec. S519 (daily ed. January 23, 2020), <https://www.congress.gov/congressional-record/2020/01/23/senate-section/article/S513-1>.
11. 166 Cong. Rec. H574 (daily ed. January 28, 2020), <https://www.congress.gov/congressional-record/2020/01/28/house-section/article/H574-2>.
12. *The Wuhan Coronavirus: Assessing the Outbreak, the Response, and Regional Implications*, 116th Cong. (2020) (statement of Ron Klain, former White House Ebola response coordinator).
13. 166 Cong. Rec. H857 (daily ed. February 6, 2020), <https://www.congress.gov/congressional-record/volume-166/house-section/page/H857>.
14. 166 Cong. Rec. H941 (daily ed. February 7, 2020), <https://www.congress.gov/congressional-record/2020/2/7/house-section/article/h941>.
15. Sen. Patrick Leahy (D-VT) gave the most focused of these speeches on February 12, 2020. See 166 Cong. Rec. S1036-1038 (daily ed. February 12, 2020), <https://www.congress.gov/congressional-record/2020/2/12/senate-section/article/s1036>.

16. *Are We Prepared? Protecting the U.S. from Global Pandemics*, 116th Cong. (2020) (statements of Ron Johnson, Republican senator of Wisconsin; Nikki Clowers, managing director of health care team of US Government Accountability Office; Julie L. Gerberding, former director of the Centers for Disease Control and Prevention; Scott Gottlieb, former commissioner of the Food and Drug Administration; Luciana Borio, former director for medical and biodefense preparedness of the National Security Council; and Asha M. George, executive director of Bipartisan Commission on Biodefense).

17. 166 Cong. Rec. S1099 (daily ed. February 24, 2020), <https://www.congress.gov/congressional-record/2020/02/24/senate-section/article/S1096-4>.

18. 166 Cong. Rec. S1125 (daily ed. February 25, 2020), <https://www.congress.gov/congressional-record/2020/02/25/senate-section/article/S1124-4>.

19. Michael D. Shear et al., “The Lost Month: How a Failure to Test Blinded the U.S. to Covid-19,” *New York Times*, March 28, 2020, <https://www.nytimes.com/2020/03/28/us/testing-coronavirus-pandemic.html>.

20. A notable exception is H.R. 5997, sponsored by Rep. Eliot Engel (D-NY), which would have required the administration to appoint a designated COVID-19 response coordinator. The earliest resolution concerning COVID-19 to pass either chamber is S. Res. 497, sponsored by Sen. Tom Cotton (R-AR), to honor the Chinese doctor, Li Wenliang, who sounded the alarm about the coronavirus. It was submitted on February 11 and passed by the Senate on March 3.

21. Even in early March, many legislators’ statements reflected this complacency, including statements to the effect that the coronavirus represented an insignificant risk to most Americans and unstinting praise for the administration’s efforts on testing, which one representative, on March 3, said already included everything that could possibly be done “in record time.” 166 Cong. Rec. H1445 (daily ed. March 3, 2020).

22. For example, see the questioning of Food and Drug Administration (FDA) Commissioner Stephen Hahn by Rep. Mark Pocan (D-WI) at the March 11, 2020, hearing of the House Appropriations Committee’s Subcommittee on Agriculture, Rural Development, Food and Drug Administration, and Related Agencies. Pocan rightly made it clear that test kit availability was different from actual capacity to process test results, which was the policy metric of concern. Noted in Scott Gottlieb, *Uncontrolled Spread: Why COVID-19 Crushed Us and How We Can Defeat the Next Pandemic* (New York: HarperCollins, 2021), 148.

23. For a record of members’ COVID-19 diagnoses and quarantine, see GovTrack.com, “COVID-19 in Congress,” <https://www.govtrack.us/covid-19>. The list includes 83 representatives and senators who were, at some point, diagnosed with COVID-19 and 136 members who reported either infection or exposure.

24. For an extended explanation of these benefits, see Sarah A. Lister and Paulette C. Morgan, “Health Care Provisions in the Families First Coronavirus Response Act, P.L. 116-127,” Congressional Research Service, April 17, 2020, <https://crsreports.congress.gov/product/pdf/R/R46316>.

25. For a title-by-title breakdown of authorship, see House Committee on Appropriations, “H.R. 6201, Families First Coronavirus Response Act: Title-by-Title Summary,” <https://appropriations.house.gov/sites/democrats.appropriations.house.gov/files/Families%20First%20Summary%20FINAL.pdf>.

26. Molly F. Sherlock, “Payroll Tax Credit for COVID-19 Sick and Family Leave,” Congressional Research Service, April 1, 2021, <https://crsreports.congress.gov/product/pdf/IF/IF11739>.

27. Paul M. Krawzak, David Lerman, and Lindsey McPherson, “Coronavirus Aid Deal Passed, Delivered to Senate; Trump to Sign,” *Roll Call*, March 13, 2020, <https://www.rollcall.com/2020/03/13/agreement-reached-on-coronavirus-stimulus/>.

28. 166 Cong. Rec. H1687-88 (daily ed. March 13, 2020), <https://www.congress.gov/116/crec/2020/03/13/CREC-2020-03-13-pt1-PgH1675-9.pdf>. Even though the calendar date of House passage was on March 14, it occurred on the legislative day of March 13.

29. Justin Amash (@justinamash), “House leaders gave us less than 30 minutes to review the revised bill. My staff and I had reviewed prior drafts, and we worked quickly to compare the 110 pages,” Twitter, March 14, 2020, 1:22 a.m., <https://twitter.com/justinamash/status/1238697075606458368>.

30. Jordain Carney, “Senate Passes House’s Coronavirus Aid Bill, Sending It to Trump,” *Hill*, March 18, 2020, <https://thehill.com/homenews/senate/488264-senate-passes-houses-coronavirus-bill-sending-it-to-trump>. Mitch McConnell stated that the law “does not

even begin to cover all of the Americans who will need help in the days ahead” and promised to quickly produce another much larger bill in the Senate. See 166 Cong. Rec. S1782 (daily ed. March 18, 2020).

31. Heather Caygle, Sarah Ferris, and Kyle Cheney, “House Eyes Extended Recess as Coronavirus Spreads,” *Politico*, March 16, 2020, <https://www.politico.com/news/2020/03/16/house-coronavirus-recess-132370>.

32. John Bresnahan and Marianne Levine, “Senate GOP to Begin Talks with Dems on Trillion-Dollar Coronavirus Package,” *Politico*, March 19, 2020, <https://www.politico.com/news/2020/03/19/senate-negotiates-third-coronavirus-package-137607>.

33. See comment of Sen. Patty Murray (D-WA), quoted in Lauren Hirsch and Leslie Josephs, “Coronavirus Stimulus Bill Fails in Key Senate Procedural Vote,” CNBC, March 22, 2020, <https://www.cnbc.com/2020/03/22/coronavirus-stimulus-congress-struggles-to-reach-a-deal.html>.

34. Among Democrats, only Sen. Doug Jones (D-AL) voted with Republicans to take up the bill. US Senate, “On Cloture on the Motion to Proceed (upon Reconsideration, Motion to Invoke Cloture on the Motion to Proceed to H.R. 748),” March 23, 2020, https://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=116&session=2&vote=00078.

35. See McConnell’s remarks on March 23 after the failure of the second cloture vote. 166 Cong. Rec. S1929 (daily ed. March 23, 2020), <https://www.congress.gov/116/crec/2020/03/23/CREC-2020-03-23-pt1-PgS1929.pdf>.

36. The S&P 500, for example, closed at 2,237 on March 23, down a third from its previous high of 3,386 on February 19. S&P 500, “Historical Data,” Yahoo Finance, <https://finance.yahoo.com/quote/%5EGSPC/history?period1=1580515200&period2=1593475200&interval=1d&filter=history&frequency=1d&includeAdjustedClose=true>.

37. See, for example, Sen. Joe Manchin’s (D-WV) remarks. 166 Cong. Rec. S1936 (daily ed. March 23, 2020). Manchin’s remarks on March 23 paint an interesting portrait of the Senate as an institution. He says that although it sounds appealing to take up a bill and then work to improve it, in fact the Senate as he has known it in his 10 years of experience has never operated in that manner. Instead, because the minority will be effectively shut out of any opportunities to change a bill once it has been taken up, by then it will be “out of our jurisdiction, if you will.” As a result, he says, all negotiation has to happen before a bill is formally considered, and any attempt to move a bill before an agreement is worked out is simply “political posturing.” See 166 Cong. Rec. S1935 (daily ed. March 23, 2020). Manchin expressed confidence (correctly, it turned out) that a deal would soon be reached and that no Democrat would stand in the way of its speedy adoption at that point.

38. Sen. Dick Durbin (D-IL) explained that the Department of Labor told legislators that instituting a federal payment such that previous earnings would be accounted for would take months, making it impractical to adopt something like Sen. Ben Sasse’s (R-NE) amendment. 166 Cong. Rec. S2047 (daily ed. March 25, 2020).

39. See Andy Biggs’ (R-NC) remarks at 166 Cong. Rec. H1825 (daily ed. March 27, 2020); Rep. Andy Harris’ (R-MD) remarks at 166 Cong. Rec. H1831 (daily ed. March 27, 2020); Rep. Ralph Norman’s (R-SC) remarks at 166 Cong. Rec. H1840 (daily ed. March 27, 2020); and Rep. Alex Mooney’s (R-WV) remarks at 166 Cong. Rec. H1841 (daily ed. March 27, 2020). Much more adamantly opposed to the totality was Rep. Ken Buck (R-CO), who condemned its unrelated spending and said, “This cure is worse than the problem.” 166 Cong. Rec. H1839 (daily ed. March 27, 2020).

40. 166 Cong. Rec. H1827 (daily ed. March 27, 2020). See also remarks of Rep. Sheila Jackson Lee (D-TX) at 166 Cong. Rec. H1834 (daily ed. March 27, 2020).

41. Interestingly, even as they exulted in their own institution’s capabilities, a number of Democrats also sought to encourage the administration to use a wartime statute allowing the country to commandeer private industrial capacity, in this case hoping to see auto manufacturers turn to ventilator manufacturing. For members calling for President Donald Trump to use the Defense Production Act during the Families First Coronavirus Response Act debate on March 18 in the Senate, see Sen. Charles Schumer’s (D-NY) remarks at 166 Cong. Rec. S1784 (daily ed. March 18, 2020). For the CARES Act debate on March 27 in the House, see Resident Commissioner Jennifer Gonzales-Colon’s (R-Puerto Rico) remarks at 166 Cong. Rec. H1827 (daily ed. March 27, 2020); Rep. Jan Schakowsky’s (D-IL) remarks at 166 Cong. Rec. H1828 (daily ed. March 27, 2020); Rep. Steve Cohen’s (D-TN) remarks at 166 Cong. Rec. H1847 (daily ed. March 27, 2020); and Speaker Nancy Pelosi’s (D-CA) remarks at 166 Cong. Rec. H1848 (daily ed. March 27, 2020).

42. For the vote and Rep. Thomas Massie’s (R-KY) motions, see 166 Cong. Rec. H1864 (daily ed. March 27, 2020). For a narrative account and reactions to Massie, see Quint Forgy, “Both Parties Pile on Massie After Effort to Force Recorded Vote Flops,” *Politico*,

March 27, 2020, <https://www.politico.com/news/2020/03/27/trump-congressman-thomas-massie-coronavirus-vote-151523>. Massie easily won his June 23 primary. See Ballotpedia, “Kentucky’s 4th Congressional District Election, 2020 (June 23 Republican Primary),” [https://ballotpedia.org/Kentucky’s_4th_Congressional_District_election,_2020_\(June_23_Republican_primary\)](https://ballotpedia.org/Kentucky’s_4th_Congressional_District_election,_2020_(June_23_Republican_primary)).

43. Both quotes are from John Bresnahan, Marianne Levine, and Andrew Desiderio, “How the \$2 Trillion Deal Came Together—and Nearly Fell Apart,” *Politico*, March 26, 2020, <https://www.politico.com/news/2020/03/26/inside-the-10-days-to-rescue-the-economy-149718>.

44. For a fuller discussion, see Philip Wallach, “Meet the New Boss,” *Law & Liberty*, April 13, 2020, <https://lawliberty.org/meet-the-new-boss-2/>.

45. An excellent and detailed explanation is Stephen G. Cecchetti and Kermit L. Schoenholtz, “The Fed Goes to War: Part 1,” *Money and Banking*, March 23, 2020, <https://www.moneyandbanking.com/commentary/2020/3/22/the-fed-goes-to-war>; Stephen G. Cecchetti and Kermit L. Schoenholtz, “The Fed Goes to War: Part 2,” March 25, 2020, <https://www.moneyandbanking.com/commentary/2020/3/25/the-fed-goes-to-war-part-2>; and Stephen G. Cecchetti and Kermit L. Schoenholtz, “The Fed Goes to War: Part 3,” April 12, 2020, <https://www.moneyandbanking.com/commentary/2020/4/12/the-fed-goes-to-war-part-3>.

46. For example, see Amit Seru and Luigi Zingales, “Save Capitalism from the CARES Act,” *Wall Street Journal*, March 30, 2020, <https://www.wsj.com/articles/save-capitalism-from-the-cares-act-11585608917>.

47. For one version of this argument, see Zachary Karabell, “Trump Is Actually the President We Need Right Now,” *Politico Magazine*, March 23, 2020, <https://www.politico.com/news/magazine/2020/03/23/trump-president-need-right-now-141906>.

48. For a roundup of such concerns, see Matt Weidinger, “How Much Unemployment Benefits Fraud Is There, Really?,” AEIdeas, July 13, 2021, <https://www.aei.org/poverty-studies/how-much-unemployment-benefits-fraud-is-there-really/>.

49. *New York Times*, “Small-Business Relief Effort ‘a Mess,’” April 2, 2020, <https://www.nytimes.com/2020/04/02/business/stocks-to-day-coronavirus.html>; and Kristina Peterson, “Small-Business Aid Program Set to Run Out of Money,” *Wall Street Journal*, April 15, 2020, <https://www.wsj.com/articles/small-business-aid-program-set-to-run-out-of-money-later-today-11586971294>.

50. See remarks of Sen. Schumer at 166 Cong. Rec. S2178 (daily ed. April 21, 2020).

51. Jordain Carney, “Senate Passes \$484B Coronavirus Relief Package,” *Hill*, April 21, 2020, <https://thehill.com/homenews/senate/493959-senate-passes-484b-coronavirus-relief-package>.

52. See, for example, Sen. Mike Lee’s (R-UT) remarks complaining of leaders asking the membership “to rubberstamp out these take-it-or-leave-it proposals without individual Members being able to read them, let alone have meaningful input in their negotiation” at 166 Cong. Rec. S2179 (daily ed. April 21, 2020). See also Sen. Rand Paul’s (R-KY) remarks that “Congress currently has allowed itself to become more of an oligarchy than an assembly. A few Members of the leadership are set to pass legislation, spending nearly a half a trillion dollars, without any recorded vote or debate” at 166 Cong. Rec. S2187 (daily ed. April 21, 2020).

53. The four laws just discussed collectively allocated \$248 billion in supplemental spending to the Department of Health and Human Services. See Karen E. Lynch and Jessica Tollestrup, “COVID-19: Overview of FY2020 LHHS Supplemental Appropriations,” Congressional Research Service, May 11, 2020, https://crsreports.congress.gov/product/pdf/R/R46353#_Toc40095353.

54. For disposable income, see various calculations at Committee for a Responsible Federal Budget, “The Response & Relief Act Would Boost Income to Record Levels,” December 24, 2020, <https://www.crfb.org/blogs/response-relief-act-would-boost-income-record-levels>. For food insecurity, see Angela Rachidi and Scott Winship, “Did Hunger Swell?,” American Enterprise Institute, September 21, 2021, <https://www.aei.org/research-products/report/did-hunger-swell/>.

55. For a story discussing early issues, see Heather Long et al., “Stimulus Checks and Other Coronavirus Relief Hindered by Dated Technology and Rocky Government Rollout,” *Washington Post*, April 17, 2020, <https://www.washingtonpost.com/business/2020/04/17/stimulus-unemployment-checks-delays-government-delays/>. For ongoing problems from the summer of 2020, see Scott Patterson and Sarah Krouse, “Billions in Federal Covid-19 Testing Funds Still Unspent,” *Wall Street Journal*, August 21, 2020, <https://www.wsj.com/articles/billions-in-federal-covid-19-testing-funds-still-unspent-11598014623>. For evidence that this problem is ongoing even in late 2021, see Amy Goldstein, “Tens of Billions of Dollars in Pandemic Aid for Hospitals and Nursing Homes Not Distributed,” *Washington Post*, September 1, 2021, https://www.washingtonpost.com/health/hospitals-covid-need-money/2021/09/01/4a42bdb8-01c2-11ec-a664-4f6de3e17ff0_story.html.

56. These laws include the Paycheck Protection Program Flexibility Act of 2020, H.R. 7010, 116th Cong, 2nd sess. (2020). Rep. Dean Phillips (D-MN) introduced it on May 26, 2020. It passed by the House, 417–1, on May 28 by voice vote in the Senate on June 3. It lengthened the maturity of Paycheck Protection Program (PPP) loans and gave recipients more flexibility in the timing of their spending of the funds. For a full description of the intent, see 166 Cong. Rec. S2690–91 (daily ed. June 3, 2020), <https://www.congress.gov/congressional-record/2020/6/3/senate-section/article/S2690-2>. PPP was also extended and passed without votes at the end of June and the beginning of July. See S. 4116, 116th Cong. (2020). Emergency Aid for Returning Americans Affected by Coronavirus Act, S. 4091, 116th Cong. (2020), sponsored by Sen. Chuck Grassley (R-IA), passed without votes in July 2020, which made available additional funds to provide temporary assistance for Americans returning from abroad affected by COVID-19. Protecting Nonprofits from Catastrophic Cash Flow Strain Act of 2020, S. 4209, 116th Cong. (2020), sponsored by Sen. Tim Scott (R-SC), changed the mechanics of certain tax payments and passed in both chambers without debate in July 2020. Impact Aid Coronavirus Relief Act, H.R. 8472, 116th Cong. (2020) allowed school districts applying for certain federal grants to use their previous year’s enrollment figures. Another modest law that deserves mention in this vein, though it waited until December to pass both chambers without votes, is the Combating Pandemic Scams Act of 2020, sponsored by Rep. Buddy Carter (R-GA), which instructed the Federal Trade Commission to specifically protect consumers from COVID-19-related frauds. See Combating Pandemic Scams Act of 2020, Pub. L. No. 116–287.

57. Quoted in Lauren Egan et al., “Senate Passes Massive \$2 Trillion Coronavirus Spending Bill,” NBC News, March 26, 2020, <https://www.nbcnews.com/politics/congress/white-house-senate-reach-deal-massive-2-trillion-coronavirus-spending-n1168136>.

58. The resolution, H.R. Res. 965, was adopted 217–189. For congressional debate, see 166 Cong. Rec. H2008–2012, 2019–2042 (daily ed. May 15, 2020). For discussion of the politics preceding the adoption of proxy voting, see Mike DeBonis and Paul Kane, “Republican Leaders Want Congress Back in Person, Contrary to Public Health Advice,” *Washington Post*, April 22, 2020, https://www.washingtonpost.com/politics/pelosi-postpones-plans-for-historic-change-in-house-voting-after-republicans-object/2020/04/22/9fc242b6-84b1-11ea-a3eb-e9fc93160703_story.html.

59. 166 Cong. Rec. H2024 (daily ed. May 15, 2020).

60. On May 26, Minority Leader Kevin McCarthy (R-CA) and others filed a lawsuit arguing that H.R. Res. 965 was unconstitutional, but both the district court and appellate court found that the matter was beyond their jurisdiction. For a description of the case, see William Ford and Margaret Taylor, “House Republicans’ Unprecedented Lawsuit to Stop Remote Voting,” *Lawfare*, August 4, 2020, <https://www.lawfareblog.com/house-republicans-unprecedented-lawsuit-stop-remote-voting>. For the district court opinion, see *McCarthy v. Pelosi*, 480 F. Supp. 3d 28 (D.D.C., 2020); and *McCarthy v. Pelosi*, 5 F.4th 34 (D.C. Cir., 2021).

61. Molly E. Reynolds, Kennedy Teel, and Jackson Gode, “Proxy Voting Turns One: The Past, Present, and Future of Remote Voting in the House,” Brookings Institution, May 21, 2021, <https://www.brookings.edu/blog/fixgov/2021/05/21/proxy-voting-turns-one-the-past-present-and-future-of-remote-voting-in-the-house/>.

62. Health and Economic Recovery Omnibus Emergency Solutions Act, H.R. 6800, 116th Cong. (2020), <https://www.congress.gov/bill/116th-congress/house-bill/6800>.

63. The bills included were S. 4317, S. 4318, S. 4319, S. 4320, S. 4321, S.4322, S. 4323, and S. 4324. At no point were these bills presented as a unified whole. See Sarah Hansen, “Where Is the Senate GOP’s \$1 Trillion HEALS Act? Here’s What We Know About the Mysteriously Splintered Proposal,” *Forbes*, July 28, 2020, <https://www.forbes.com/sites/sarahhansen/2020/07/28/where-is-the-senate-gops-1-trillion-heals-act-heres-what-we-know-about-the-mysteriously-splintered-proposal/?sh=14a29fa24c96>.

64. Marianne Levine, “Senate Republicans to Introduce Smaller Covid Package That Includes Billions for Postal Service,” *Politico*, August 17, 2020, <https://www.politico.com/news/2020/08/17/senate-republicans-coronavirus-package-postal-service-funding-397203>.

65. Valerie Brankovic and Blaire Bryant, “New Legislative Proposals Aim to Enhance COVID-19 Contact Tracing,” National Association of Counties, June 23, 2020, <https://www.naco.org/blog/new-legislative-proposals-aim-enhance-covid-19-contact-tracing>.

66. H.R. 7574 passed the House in September 2020 but never moved in the Senate. See Strengthening America’s Strategic National Stockpile Act of 2020, H.R. 7574, 116th Cong. (2020), <https://www.congress.gov/bill/116th-congress/house-bill/7574/actions?r=483&s=8>. The bipartisan version is still in talks in 2021. See Maggie Hassan, “Sens. Hassan, Cassidy & Rep. Slotkin Introduce Bipartisan Legislation to Overhaul National Stockpile and Expand Domestic Manufacturing,” press release, June 8, 2021, <https://www.hassan.senate.gov/>

news/press-releases/sens-hassan-cassidy-and-rep-slotkin-introduce-bipartisan-legislation-to-overhaul-national-stockpile-and-expand-domestic-manufacturing.

67. Public Safety Office Pandemic Response Act, H.R. 6509, 116th Cong. (2020), <https://www.congress.gov/bill/116th-congress/house-bill/6509?s=2&r=672>; Stopping Improper Payments to Deceased People Act, S. 4104, 116th Cong. (2020), <https://www.congress.gov/bill/116th-congress/senate-bill/4104?s=2&r=619> (passed Senate June 30); Improving Emergency Disease Response via Housing Act of 2020, H.R. 6294, 116th Cong. (2020), <https://www.congress.gov/bill/116th-congress/house-bill/6294?s=8&r=486> (passed House September 21); COVID Preparedness, Response, and Effective Planning for Advanced Requirements by the Executive Branch Act of 2020, H.R. 7496, 116th Cong. (2020), <https://www.congress.gov/bill/116th-congress/house-bill/7496?s=8&r=401> (passed House September 30); and Pandemic Effects on Home Safety and Tourism Act, H.R. 8121, 116th Cong. (2020), <https://www.congress.gov/bill/116th-congress/house-bill/8121?s=7&r=301> (passed House November 17).

68. Child Care for Economic Recovery Act, H.R. 7327, 116th Cong. (2020). This act passed the House on July 29, 2020, 250–161. The bill would have provided more money for federal grants for childcare programs (\$850 million) and childcare safety (\$10 billion), as well as made the childcare tax credit fully refundable. For the committee’s justification, which notes the challenges that COVID-19 has created for women in the labor force, see House Committee on Appropriations, “House Passes Child Care for Economic Recovery Act,” press release, July 29, 2020, <https://appropriations.house.gov/news/press-releases/house-passes-child-care-for-economic-recovery-act-o>. For floor debate to the same effect, see DeLauro’s remarks at 116 Cong. Rec. H3900 (daily ed. May 16, 2019); Rep. Mikie Sherrill’s (D-NJ) remarks at 116 Cong. Rec. H3901 (daily ed. May 16, 2019); and Rep. Jahanna Hayes’ (D-CT) remarks at 116 Cong. Rec. H3904 (daily ed. May 16, 2019).

69. The Delivering for America Act, H.R. 8015, 116th Cong. passed on August 22, 2020, 257–150. It prohibits the US Postal Service from changing its levels of service during the COVID-19 emergency and was related to the brewing controversy over mail-in voting ahead of the fall 2020 election. Delivering for America Act, H.R. 8015, 116th Cong. (2020).

70. Condemning All Forms of Anti-Asian Sentiment as Related to COVID-19, H.Res. 908, 116th Cong. (2020). It passed 243–164 on September 17, 2020; most Republicans denounced the bill as a waste of legislators’ time.

71. Health and Economic Recovery Omnibus Emergency Solutions Act, H.R. 925, 116th Cong. (2020). This time, 18 Democrats voted no, and no Republicans voted aye. This bill began as an uncontroversial piece of legislation that passed both chambers (the House in November 2019 and the Senate in January 2020) and was awaiting resolution of differences.

72. Trump’s executive order was basically hortatory, but the Centers for Disease Control and Prevention (CDC) issued an agency order formalizing this action on September 4, 2020. See Centers for Disease Control and Prevention and US Department of Health and Human Services, “Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19,” *Federal Register* 85, no. 173 (September 4, 2020): 55292–97, <https://www.govinfo.gov/app/details/FR-2020-09-04/2020-19654>.

73. Maggie Haberman, Emily Cochrane, and Jim Tankersley, “Sidestepping Congress, Trump Signs Executive Measures for Pandemic Relief,” *New York Times*, September 9, 2021, <https://www.nytimes.com/2020/08/08/us/politics/trump-stimulus-bill-coronavirus.html>; and Yuval Levin and Adam J. White, “The Return of Pen and Phone Constitutionalism,” *National Review*, August 8, 2020, <https://www.nationalreview.com/2020/08/the-return-of-pen-and-phone-constitutionalism/>.

74. Alan D. Viard, “Payroll Tax Deferral Ends with a Whimper,” AEIdeas, January 13, 2021, <https://www.aei.org/economics/payroll-tax-deferral-ends-with-a-whimper/>.

75. The DC District Court granted summary judgment against the CDC, ruling that it had clearly exceeded its statutory authority. It entered an order to vacate the policy, but it simultaneously stayed its own judgment pending appeal. That appeals process proceeded up to the Supreme Court in July, when four justices announced they would have granted petitioners’ application to remove stay, four voted (without comment) to keep the stay, and Justice Brett Kavanaugh concurred in keeping the stay. He stated, however, that the CDC was exceeding its statutory authority and that “clear and specific congressional authorization (via new legislation) would be necessary for the CDC to extend the moratorium past July 31.” *Alabama Association of Realtors v. United States Department of Health and Human Services*, 141 S. Ct. 2320 (2021). In August, after President Biden had the CDC reinstate the stay (again acting at the urging of members of his own party in Congress), the Supreme Court once again took up the case. This time, six justices joined a per curiam opinion, which removed the stay, thereby vacating the policy. Citation not yet available, opinion can be found at <https://scholar.google>.

com/scholar_case?case=7179262334868952839. For commentary, see Philip Wallach, “Evicting Congressional Responsibility,” *National Review*, August 13, 2021, <https://www.nationalreview.com/2021/08/evicting-congressional-responsibility/>.

76. Committee on Ways and Means, “How It Works: Paying the Unemployed Through President Trump’s Executive Order,” August 14, 2020, <https://gop-waysandmeans.house.gov/how-it-works-paying-the-unemployed-through-president-trumps-executive-order/>.

77. Emily Berman, “The Roles of the State and Federal Governments in a Pandemic,” *Journal of National Security Law & Policy* 11 (2020): 61–81, https://jnslp.com/wp-content/uploads/2020/12/The-Roles-of-the-State-and-Federal-Governments-in-a-Pandemic_2.pdf.

78. Kaiser Family Foundation, “KFF Health Tracking Poll,” September 2020, Figure 16, <https://www.kff.org/coronavirus-covid-19/report/kff-health-tracking-poll-september-2020/>.

79. Joel Achenbach and Laurie McGinley, “Another Casualty of the Coronavirus Pandemic: Trust in Government Science,” *Washington Post*, October 11, 2020, https://www.washingtonpost.com/health/covid-trust-in-science/2020/10/11/b6048c14-03e1-11eb-a2db-417cddf4816a_story.html.

80. Seung Min Kim, Jeff Stein, and Mike DeBonis, “Bipartisan Group of Lawmakers Announces \$908 Billion Stimulus Plan, Aiming to Break Logjam,” *Washington Post*, December 1, 2020, <https://www.washingtonpost.com/us-policy/2020/12/01/stimulus-congress-coronavirus/>.

81. Further Continuing Appropriations Act, 2021, and Other Extensions Act, H.R. 8900, 116th Cong. (2020), <https://www.congress.gov/bill/116th-congress/house-bill/8900>; Further Additional Continuing Appropriations Act, 2021, H.R.J. Res. 107, 116th Cong. (2020), <https://www.congress.gov/bill/116th-congress/house-joint-resolution/107>; Extension of Continuing Appropriations Act, 2021, H.R.J. Res. 110, 116th Cong. (2020), <https://www.congress.gov/bill/116th-congress/house-joint-resolution/110>; and Further Extension of Continuing Appropriations Act, 2021, H.R. 1520, 116th Cong. (2020), <https://www.congress.gov/bill/116th-congress/house-bill/1520>.

82. Andrew Taylor, “\$900B COVID Relief Bill Passed by Congress, Sent to Trump,” Associated Press, <https://apnews.com/article/congress-900-billion-coronavirus-bill-75389549d3eaf2f3828b16d45c9706e6>.

83. Unusually, the House divided the question of the bill’s passage into two votes. One pertained only to the Commerce, Justice, Science, Defense, Financial Services, and Homeland Security pieces of the omnibus spending package, which carried 327–85. The other included eight other spending bills and COVID-19 relief and other legislation, which passed 359–53. Jennifer Shutt and David Lerman, “Senate Clears Massive Year-End Spending Bill with Coronavirus Relief,” *Roll Call*, December 21, 2020, <https://www.rollcall.com/2020/12/21/house-passes-massive-year-end-spending-bill-with-coronavirus-aid/>.

84. Especially helpful in parsing the bill was Zach Montague, “A Look at What’s in the Stimulus Package Trump Signed,” *New York Times*, December 28, 2020, <https://www.nytimes.com/2020/12/28/business/economy/second-stimulus-package.html>.

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