



GOVERNMENT MATTERS

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Donald Trump became the first US president to get impeached twice, after a House majority (including 10 Republicans) charged him yesterday with "incitement of insurrection." The Senate trial won't take place until after Joe Biden is sworn in, meaning President Trump will likely serve out his full term in office.

President-elect Biden is set to give his first major policy address this evening focused on his plans to address the Covid-19 pandemic. He is expected to focus on both his multi-trillion legislative proposal and changes intended to ramp up the lackluster vaccine rollout.

President-elect Biden will give his first substantive policy remarks tonight about his plans to address the Covid-19 pandemic, which is by far his top near-term priority, the success of which will determine his ability to pursue his other priorities. Biden is expected to discuss the specifics of his legislative proposal, which **most believe will have an overall price tag around \$2 trillion**. Biden [reportedly](#) was initially planning on seeking \$1.3 trillion, but soon-to-be Senate Majority Leader Chuck Schumer (D-NY) last week sought to convince Biden that more was needed. As his inaugural theme is "America United," Biden wants to not just pass legislation that will fund efforts to end the pandemic, but he also wants to pass it in a way that is seen as unifying the country. Thus, he is seeking to pass the legislation through regular order on a bipartisan basis by attracting the support of at least 10 Senate Republicans. However, this is highly unlikely. **Most congressional Democrats, and even members of Biden's own team, are skeptical about the ability to garner more than a few GOP defectors, even if they pursue a scaled-down version of the legislation through regular order and then follow it with a bigger package via budget reconciliation.** The problem for Biden is that to cobble together enough Republican votes, he will likely not only have to include some of their priorities, like a liability shield, that are opposed by many Democrats, but also jettison key Democratic priorities, like robust state and local aid. **While most believe an effort will be made to advance the next Covid-19 relief measure on a bipartisan basis, ultimately expect congressional Democrats, led by Schumer and House Speaker Nancy Pelosi (D-CA), to convince Biden that the only practical route to achieve the level of assistance that Democrats believe is necessary is via the reconciliation process that only requires a simple majority in the Senate, thus allowing Democrats to pass the legislation on their own -- if they can reach unanimous agreement on its specifics among themselves.** Most likely the final Covid-19 legislation will be able to be categorized into three types of provisions:

1. Those aimed at addressing the pandemic directly, e.g. additional funding for vaccine distribution;
2. Those aimed at addressing the economic impact of the pandemic, e.g. additional stimulus checks, state and local funding, extended and increased unemployment insurance funding; and
3. Those politically required to gain unanimous Democratic consensus in the Senate and nearly unanimous Democratic consensus in the House, e.g. expansion of the Child Tax Credit.

In Washington, process always trumps substance and the big question is which of these provisions will be deemed allowed to be included under reconciliation, or in DC parlance, not "extraneous under the Byrd Rule." The reconciliation parameters are byzantine, but one general principle is that for a

provision to be "germane," it needs to have a direct budgetary impact. Furthermore, past reconciliation bills have only dealt with mandatory spending, like entitlements such as Medicare, not discretionary spending, which is what annual appropriations are considered. This is not necessarily to say that some discretionary spending cannot be crafted legislatively as mandatory spending or that some discretionary spending can be allowed via reconciliation, but **it's not clear with respect to many of the provisions that Democrats will be seeking to include in the Covid-19 relief package. Some will obviously pass muster, like additional stimulus checks, but the others will be subject to the determination of the Senate parliamentarian.** [Vox published an article](#) that explains in more detail and in plain English what is and isn't likely to be allowed to be included via reconciliation. Despite Biden's desire to pursue the legislation through regular order, House and Senate Democrats will need to pass an FY21 budget resolution to utilize the reconciliation process and that resolution will define the potential scope of what can be included in the legislation.

In terms of timing, most expect this next Covid-19 relief measure to become law within Biden's first 100 days, if not sooner, but the legislative process, particularly under reconciliation, will require several weeks, not just a matter of days. In addition to laying out key elements of his legislative proposal, Biden is expected to address other Covid-19-related policies, particularly with respect to expediting the vaccine rollout which has been widely panned as too slow and haphazard to date.

His Covid-19 response team has reportedly determined that Operation Warp Speed was well-focused on vaccine development, but lacked sufficient focus on vaccine distribution and administration, [particularly in light of concerns over the more transmissible variants](#) initially found in the United Kingdom and South Africa. Many critics are calling for a federal takeover of the rollout, but the administration of the vaccines is ultimately in the hands of the states. Biden's team is privately worried according to some media reports that they overestimated their capabilities to ramp up to a promised 100 million inoculations completed within the first 100 days of the new administration, but publicly Biden has reaffirmed his confidence to this goal -- if Congress provides the additional funding he is seeking in a timely manner -- and expect him to repeat this promise again in his remarks today. Various news reports have already previewed several of Biden's new policies -- mandating masking nationally where possible (i.e. on federal property and where it impacts interstate commerce, such as on planes, trains, and buses), distributing the full vaccine supply rather than holding any back for second doses, expanding use of the Defense Production Act, expanding the scope of prioritization for inoculations, and launching a public education campaign to combat vaccine hesitancy. The Centers for Disease Control and Prevention (CDC) under President Trump has now already adopted distributing the full vaccine supply and expanding the scope of prioritization and some states which were more stringent, such as New York, have adopted this recommendation by expanding those currently eligible beyond first-responders and other frontline essential workers to people aged 65 and older or those who are immunocompromised. Ultimately though, even if rollout efficiency is improved, the pace of vaccinations will be constrained by the level of supply, which will be determined by whether and when the **AstraZeneca (AZN)** and **Johnson & Johnson (JNJ)** vaccine candidates receive an emergency use authorization (EUA) from the Food and Drug Administration (FDA). Results published yesterday in The New England Journal of Medicine from early-stage trials of the Johnson & Johnson vaccine indicate that it was found to be safe and to generate an immune response and outgoing operation Warp Speed Chief Scientific Adviser Moncef Slaoui said on Tuesday that it could receive an EUA by mid-February. However, the company's own chief scientific officer [said in an interview](#) on Tuesday that he hopes for an EUA from the FDA by "somewhere in March." Also, [the New York Times reported](#) on Tuesday that even if the Johnson & Johnson vaccine is approved earlier, it likely won't be able to provide as many doses by this spring as it promised due to manufacturing delays. While the Biden administration has no control over the results of the pending trials and will leave it to the career professionals at the FDA to determine whether and when the vaccines are approved, it can potentially use the DPA to help expedite production. The Biden transition team has indicated a greater willingness to use its authority under the DPA than the Trump administration as some of the

more conservative members of the Trump administration were reluctant to have the government directly interfere with the private sector.