

# BEYOND COVID-19:



## Blueprint for Restoring Liberty, Rebuilding the Economy, Safeguarding Public Health and Responding to Crises

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## EXECUTIVE SUMMARY

*Never again.*

Over 30 million Americans have been forced out of work. Thirty-nine states have imposed quasi-martial law, ordering people to stay indoors for all but essential activities. The federal government has added trillions of dollars to our national debt to keep the economy from imminent collapse. And our Constitution has been left on the ground in tatters.

Perhaps worst of all, the United States revealed its weaknesses for all the world to see – including to those who would mean us harm.

*And it all happened due to fear of the unknown.*

As of this writing, the dangers of COVID-19 are *still* not fully known. Epidemiologists agree that it is a highly contagious virus that poses serious public health risk, but differ widely over its true mortality rate.

We've now witnessed first-hand the irrationality of the *Precautionary Principle* — which undergirds many of the regulations we have on the books today, when taken to its extreme.

The precautionary principle is the idea that government should regulate potentially harmful activity even when there is scientific uncertainty over the level of risk. It might be summed up by the old idiom, “better safe than sorry.”

But it is this very principle that left the United States woefully unprepared for the COVID-19 pandemic. We did not have adequate numbers of virus testing kits because reputable American companies were incapable of producing them. We lacked the tests because they required Food and Drug Administration (FDA) approval which delayed their availability... *as a precaution that they MIGHT give inaccurate results.*

Unfortunately, the precautionary principle does not typically take into account real world trade-offs, including unintended harm caused by efforts to limit risk.

The nation's response to COVID-19 was the precautionary principle on steroids.

Certain, measurable harm was imposed on our civil liberties, on our economy and on our health so we could reduce the *less-certain* public health risk of COVID-19.

In practice, “better safe than sorry” turned out to be “sorry we made you unsafe.”

Many mistakes were made, but they provide lessons that may help us pursue better policies in the future. Among the lessons, we must:

- ✓ **Protect fundamental rights to the fullest extent possible, even during a crisis;**
- ✓ **Permit states to chart their own course, but make it clear they must bear primary responsibility for their mistakes;**
- ✓ **Eliminate costly carbon regulations that COVID-19 response has brought into question;**
- ✓ **Change the U.S. relationship with China;**
- ✓ **Change the U.S. relationship with the World Health Organization (WHO);**
- ✓ **Improve the science on pandemic response;**
- ✓ **Stay focused on the Big Picture;**
- ✓ **Get FDA/CDC out of the testing business;**
- ✓ **Reopen universities;**
- ✓ **Reverse health care central planning;**
- ✓ **Put pandemic experts in the back seat;**
- ✓ **Roll back regulations that helped spread the virus or impeded our ability to slow it;**
- ✓ **Focus pandemic relief on addressing COVID-19 and restoring America's status as an economic powerhouse, not advancing redistributive agendas.**



Further explanation of each of these recommendations follow.

**Protecting fundamental rights.** Many state and local governments have taken a meat cleaver rather than a scalpel to fundamental rights in the name of preventing the spread of COVID-19 and, consequently, they will leave a much greater scar than necessary. The 10<sup>th</sup> Amendment to the U.S. Constitution gives states considerable police powers to address threats to public safety and health, but those powers are not unlimited. The 14<sup>th</sup> Amendment, backed by considerable U.S. Supreme Court case law, establishes that the Bill of Rights not only governs the relationship between the governed and the federal government, but also between the governed and their local and state governments. Federal, state and local governments may infringe upon fundamental rights to achieve compelling state interests, but they must generally do so by the least restrictive means necessary to achieve state interests. Their regulations must also be applied neutrally, meaning they must apply to everyone – not just select groups. Yet, many states and localities have not observed these limitations. The cities of Greenville, Mississippi and Louisville, Kentucky, for example, tried to bar drive-in Easter Sunday services ostensibly to prevent the spread of COVID-19 while permitting drive-in fast food restaurants to continue to operate. [U.S. District Court Judge Justin Walker](#) issued a temporary restraining order against Louisville, saying, “Among the reasons the United States is so open, so tolerant and so free is that no person may be restricted or demeaned by government in exercising his

or her religion.” Several states have ordered gun and ammunition shops closed while permitting liquor stores to remain open. In taking such steps, these governments made value judgements that essential liberties are non-essential but non-essential goods are essential. Government infringements on civil liberties during the COVID-19 pandemic will undoubtedly trigger significant litigation. In the meantime, Washington should take steps to rein-in the worst abuses. It can do so by: 1. *Establishing a dedicated U.S. Department of Justice (DOJ) team to investigate COVID-19-related state and local regulations that may violate constitutional rights.* [Attorney General William Barr](#) has already directed Assistant Attorney General for Civil Rights Eric Dreiband and U.S. Attorney General for the Eastern District of Michigan Matthew Schneider to oversee the efforts of the 93 U.S. Attorneys to monitor and take action to correct unreasonable infringements of constitutional rights by state and local governments. “If a state or local ordinance crosses the line from an appropriate exercise of authority to stop the spread of COVID-19 into an overbearing infringement of constitutional and statutory protections, the Department of Justice may have an obligation to address that overreach in federal court,” Attorney General Barr wrote in an April 27, 2020 memorandum. This is a good step, but given the competing DOJ priorities and relatively greater importance of constitutional protections, a dedicated team of investigators is necessary. 2. *Requiring state and local governments to narrowly tailor COVID-19 restrictions as a condition of any direct aid.* The 10<sup>th</sup> Amendment of the U.S. Constitution specifies: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.” This gives the states direct authority over their response to the pandemic, but through its funding, the federal government has enormous leverage. The [1984 National Minimum Drinking Age Act](#), for example, established a national minimum drinking age of 21 by leveraging federal highway funds. In [South Dakota v. Dole](#), the U.S.



Supreme Court found that Congress may apply reasonable conditions to funding in the interest of “promoting the general welfare.” Federal funding should be withheld from states whose infringements of fundamental rights are not the least restrictive in addressing the pandemic.

**Making sure states bear the responsibility for their policies.** President Donald Trump’s plan for a phased re-opening of the U.S. economy relies on the governors to decide how quickly to reboot based on the facts on the ground. But some states will undoubtedly maintain stringent restrictions on economic activity long after they’ve met the criteria for phased re-opening outlined in “Guidelines for Opening Up America Again,” confident they’ll receive bail-outs for lost tax revenues. [Mayor Bill de Blasio](#), for example, told Fox News that New York City needs at least \$7 billion in federal relief to make up for its tax revenue shortfall to continue providing essential services. He also said he didn’t expect to start re-opening the city until July or August. Governors should open their states at their own pace, but it must be made clear to them that their own states and city residents – rather than the U.S. taxpayer – will bear the full costs of re-opening at a slower pace than necessary. To encourage states and localities to open up expeditiously and responsibly, Washington should: 1. *End the Paycheck Protection Program.* The Paycheck

Protection Program (PPP), created under the “Coronavirus Aid, Relief and Economic Security Act,” or CARES Act, provides forgivable loans to small businesses to enable them to keep employees on payroll during government-mandated shutdowns. The program was designed to help small companies survive temporary economic lockdowns and it has already been funded to the tune of [\\$649 billion](#), equal to nearly 14% of total federal outlays in 2019. A significant portion of the loans were granted to large companies better equipped to weather the storm – including the Los Angeles Lakers, Ruth’s Chris Steak House, Potbelly and Shake Shack. The exact number of such loans is not known as the Small Business Administration (SBA), which oversees the program, has not disclosed the recipient list. There will be less urgency to open up the economy so long as programs such as the PPP continue to subsidize an economic shutdown. The PPP should not only be closed down, but the SBA should publish a list of loan recipients to ensure accountability to taxpayers. 2. *Consider a much more modest forgivable loan program to protect the jobs of those most at risk from COVID-19.* President Trump’s plan for the phased reopening of the economy [strongly encourages](#) employers to offer special accommodations for those personnel who are members of vulnerable populations, but offers no practical means of helping them retain



these employees when such accommodations are impossible. Continued self-isolation of those meeting Centers for Disease Control and Prevention (CDC) criteria as most at risk from COVID-19 would not only save lives, but prevent the re-imposition of economically-ruinous regulations. Congress should consider a PPP-style forgivable loan program to help small businesses carry vulnerable employees until it is safe for these employees to return to work. To ensure that the funds go where they are truly needed, eligibility could be limited to companies with 25 or fewer employees (instead of 500 under PPP) and the loans capped at \$500,000 (instead of \$10 million). To be eligible for loan forgiveness, qualifying business should be required to submit documentation proving they kept at-risk employees unable to work due to the risks of COVID-19 exposure on their payroll. 3. *Create a special federal court to address COVID-19-related takings cases.* The 5<sup>th</sup> Amendment of the U.S. Constitution specifies that no “private property [shall] be taken for public use, without just compensation.” Although temporary or partial taking of property in the state’s interest has been upheld by the courts, the 1992 [\*Lucas v. South Carolina Coastal Commission\*](#) found that a regulation that denies an owner all economically viable use is a categorical taking and requires compensation. The longer the government-mandated business closures continue, the greater the number of small businesses that will be forced to shutter permanently – denying their owners all “economically viable use” of their property. Creating a special federal court to address such takings cases will not only allow those who have lost everything an inexpensive and expeditious means of receiving relief, but create a sense of urgency for state and local governments to open business as quickly as possible. 4. *Limit new government-to-government assistance to collateralized loans.* New York City Mayor Bill de Blasio may choose to keep his city closed until September, but New Yorkers, not residents of Wyoming or South Dakota, should be forced to pay the costs of such a shutdown. This would also ensure that Mayor de

Blasio is held accountable for his actions by his constituents. 5. *Restrict federal funds to states that fail to assist the federal government in limiting COVID-19 risks from non-residents unlawfully in the U.S.* States should not undertake measures that are likely to yield enhanced U.S. COVID-19 exposure risks such as operating sanctuary cities or other areas that allow persons present in the U.S. unlawfully to escape examination and detention. Similarly, states should limit COVID-19 payments to any non-residents unless those payments are tied to COVID-19 testing and tracing. In either case, the president should be empowered to declare a COVID-19 immigration emergency which will limit federal grants from states that undermine the territorial integrity of the U.S. during a pandemic and also place new immigration limits on entry into the U.S. for a maximum of six months.

#### **Eliminating greenhouse regulations.**

Regulations imposed to reduce greenhouse gas emissions are costly and, with more than 30 million Americans unemployed due to the COVID-19 response, the U.S. would benefit from reducing or eliminating them. A [University of Chicago](#) study found that state renewable portfolio standards alone cost consumers an extra \$125.2 billion in the first seven years of the policy. At the same time, the significant reductions in carbon emissions due to the COVID-19 response suggest that carbon emissions from human sources may be less important than previously believed. According to the [International Energy Agency](#), global energy demand will experience its steepest decline since World War II and could result in an overall decline in greenhouse gas emissions of 8%. The sharp reductions in anthropogenic emissions of carbon, however, have not been accompanied by slower growth in atmospheric CO2 concentrations. According to data from the [Mauna Loa observatory](#), ground-level ozone, carbon monoxide, nitrogen dioxide and particulate matter have all declined – but not CO2. Meteorologist Joe Bastardi says this could suggest that the oceans rather than human



activity may be the primary source of growing CO2 concentrations. Recommendations: 1. *Repeal state renewable energy standards.* 2. *End the federal Renewable Fuel Standard.* 3. *Relax federal Home Appliance Standards.* The U.S. Department of Energy, through the Buildings Technologies Office, sets minimum energy efficiency standards for approximately 60 categories of appliances and equipment used in homes, businesses and other applications, as required by existing law pushing domestic manufacturing offshore and raising the costs of these products. The president should be empowered to waive these requirements for up to 24 months in order to reduce compliance costs and help American manufacturing.

#### Changing the U.S.'s relationship with China.

We cannot trust China with the health and safety of the American people, and it is time that U.S. policy is changed to reflect this fact. China's initial story that a Wuhan wet market was the source of the COVID-19 virus appears to be unraveling as it is increasingly questioned by the [scientific community](#). At the same time, the theory that the virus escaped from a lab – once written-off as a conspiracy theory – has gone mainstream. The *Washington Post's* Josh Rogan, for example, reported that U.S. embassy officials [warned](#) that research on “SARs-like coronaviruses in bats” being conducted at the Wuhan Institute of Virology posed a serious

risk to public health due to inadequate safety procedures at the lab. [Secretary of State Mike Pompeo](#) gave the theory a boost, telling reporters on April 29, 2020 that “[T]he world still hasn't gained access to the WIV [Wuhan Institute of Virology] there. We don't know precisely where the virus originated from...”

China also deliberately suppressed information that could have helped other nations better prepare for the pandemic. On December 31, 2019 and again on January 4, 2020, Chinese officials [lied](#) when they claimed there was no evidence of human-to-human transmission of COVID-19. On January 3, 2020, Wuhan police [muzzled](#) Li Wenliang, a Chinese doctor who warned colleagues of the coming pandemic. A classified [U.S. intelligence report](#) in March determined that China actively concealed and is still concealing the extent of its COVID-19 outbreak. Assistant to the President [Peter Navarro](#) has suggested that the Chinese lied so that they could buy time to hoard world supplies of personal protective equipment and ventilators for their own needs. Because China lied, tens of thousands of Americans will die needlessly. But this is far from the first time China has [placed American lives in jeopardy](#). In 2007, Mattel had to recall nearly one million toys and Rc2, maker of the popular Thomas the Tank Engine, had to recall more than 1.5 million of its trains and accessories because Chinese manufacturers used lead paint on them. That same year, nearly a half-million Chinese-manufactured tires sold in the U.S. were recalled after it was learned that a safety feature that prevented them from falling apart was discontinued. The following year, the FDA [linked](#) the deaths of 149 Americans to Chinese-manufactured heparin. Heparin is a blood thinner made from the mucous membranes of pigs. The CDC determined that most of the victims received heparin tainted with [over-sulfated chondroitin sulfate](#), a substance made from fish and animal cartilage that is similar to the active ingredient in heparin but can be produced at a fraction of the cost. Indeed, the FDA concluded that the adulteration was



economically motivated. The same year, the FDA banned [toothpaste](#) from China because it was found to be tainted with a poisonous compound used in antifreeze and as a solvent. China considers the United States its greatest geopolitical and economic enemy, and it is time policymakers question the wisdom of placing the nation's health, safety and national security in China's hands. The U.S. should, at minimum:

1. *Step up FDA and Consumer Product Safety Commission (CPSC) inspections in China.* U.S. agencies such as the CPSC and the FDA have long conducted inspections in China, but current staffing is insufficient to monitor products through their supply chains. These agencies should substantially beef up their staffs and – unlike the U.S.-Mexico wall – compel the Chinese to pay for it.
2. *Extend the ban on travel between the U.S. and China.* Except for the purpose of repatriating citizens, no travel between China and the United States should be permitted until China opens the Wuhan Virology Institute labs up to U.S. inspectors, comes clean on the extent of COVID-19 in China and agrees to a transparent process for sharing vital health information for the protection of the American people.
3. *The United States should sue China for damages at the International Court of Justice (ICJ).* [Article 75](#) of the WHO constitution provides the jurisdictional basis for suing at the ICJ.
4. *Expand Committee on Foreign Investment in the United States (CFIUS) scrutiny of Chinese investments.* [CFIUS](#) is an inter-agency committee that is empowered to conduct national security reviews of acquisitions, leases, mergers, joint ventures or other investments in the United States by foreign entities (or individuals) that could result in foreign entities gaining control over U.S. business operations. The CFIUS considers a range of factors to determine whether investments threaten U.S. national security. A transaction may pose a risk if the U.S. business has national security contracts, has access to classified information, has offices in close proximity to U.S. national security facilities or the transaction would give a foreign entity control over critical infrastructure or over critical

technologies or products subject to export controls. CFIUS should add to this list of national security risks transactions that give foreign entities control over medical equipment and supplies, pharmaceuticals and information technology – including through joint ventures outside U.S. borders. The importance of classifying medical supplies and equipment as critical to national security became clear during the COVID-19 pandemic. In January, the [Chinese government](#) prohibited American companies 3M and Honeywell from exporting to the United States N95 respirators, gloves and other personal protective equipment produced in their factories in China. CFIUS should also consider scrutinizing foreign investments in American food companies. [Smithfield Foods](#), the world's largest hog producer and pork processor, was acquired by a Chinese company in 2013. At a time when Tyson's CEO [John Tyson](#) has warned the “food supply chain is breaking,” the U.S. must be confident in the loyalties of its food suppliers.
- 5. *Amend the Foreign Sovereign Immunities Act (FSIA) to allow Americans to bring suits against China.* Even if it can be proved that the source of the virus was a Wuhan lab, American citizens will have a difficult time winning judgements in U.S. courts because the 1976 FSIA prevents foreign governments from being sued in domestic courts, except under certain specific circumstances. Congress should pass the “Holding the Chinese Communist Party Accountable for Infecting Americans Act of 2020,” sponsored by U.S. Representative [Dan Crenshaw](#) (R-TX) and U.S. Senator Tom Cotton (R-AR), which would add “damages caused by China's dangerous handling of the COVID-19 outbreak” as an additional exception to the law.
- 6. *Keep the Jones Act.* The [Jones Act](#) is a 100-year-old maritime law requiring that goods shipped between U.S. ports be transported on ships built, owned and operated by U.S. citizens. The purpose of the law is to ensure that the U.S. always maintains sufficient maritime capabilities for national defense purposes so it's never reliant on foreign — perhaps hostile — powers for its shipping needs during times of war or other



crises. It's played an invaluable role in securing America's 95,000 miles of coastline and 25,000 miles of navigable waterways as it has prevented high-risk foreign vessels from entering our waters and reduced the demands on the U.S. Coast Guard. The U.S.'s struggle to find sufficient supplies of personal protective equipment and ventilators should serve as a wake-up call: We must never again put American safety in the hands of foreign powers. 7. *Develop alternative sources of critical medical supplies, pharmaceutical supplies and rare earth minerals.* The U.S. should develop alternative supplies of critical medical, pharmaceutical and national defense materials to reduce its reliance on China. Congress should pass the "[Medical Supply Chain Security Act](#)," sponsored by U.S. Senator Josh Hawley (R-MO), which will provide tools for better assessing the security of the medical supply chain. The U.S. should also build strategic stockpiles of critical medical equipment, supplies and national defense material, purchased from non-Chinese sources. 8. *Invoke the International Emergency Economic Powers Act to prevent further investments in China relating to critical supplies.* In consultation with Congress, President Trump should restrict new U.S. investments in China related to critical medical supplies and equipment, pharmaceuticals and medical testing. The [International Emergency Economic Powers Act](#) gives the president the power to do so in response to an "unusual or extraordinary threat" posed to the United States overseas. 9. *Remove U.S. regulatory impediments to the development of domestic rare earth minerals.* [Rare earth minerals](#) are used in many medical devices, and China controls 95% of the rare earth mineral market. State regulations, such as bans on suction dredging, are hindering the U.S.'s ability to develop its own rare earth capabilities and should be lifted.

**Changing the U.S.'s relationship with the WHO.** It turns out that WHO Director-General Tedros Adhanom Ghebreyesus, the Ethiopian microbiologist who once served as a top official in his country's brutal Marxist regime and who



as recently as 2017 thought it was a good idea to appoint deposed Zimbabwean dictator Robert Mugabe as a "goodwill ambassador," couldn't be trusted to put public health above ideology. Who could have guessed? The National Center for Public Policy Research did: In June 2017, then-National Center Senior Fellow [Jeff Stier](#) wrote: "WHO is plagued by persistent wasteful spending, utter disregard for transparency, pervasive incompetence and failure to adhere to even basic democratic standards." According to an Associated Press report, the WHO spent as much on travel as it did fighting malaria, tuberculosis and malaria combined. The National Center called for funding to be cut as a means of pressuring the WHO to institute needed reforms. Had it been forced to reform, instead of acting as China's public relations agency during the COVID-19 pandemic, the WHO might have fulfilled its mission of saving lives. President Trump has suspended U.S. funding to the WHO. That suspension should not be lifted until Director-General Tedros is replaced by a true reformer. Dr. Mike Ryan, the WHO's executive director, has parroted Beijing's narrative on COVID-19 and should also be replaced. In the absence of a thorough housecleaning at the WHO, the U.S. should withdraw from the organization altogether and spearhead the

creation of a separate, non-politicized world health body that includes Taiwan – which sounded the alarm about COVID-19, but is excluded from WHO membership at Beijing’s behest.

**Improving Pandemic Science.** Modelling can be an important tool, but it should never be the sole basis for government policy, least of all when the available data are suspect. Yet the economic shutdown to halt the spread of COVID-19 was justified by models indicating that that millions could die in the United States without drastic action. An [Imperial College of London](#) model predicted that with no action at all, 81% of all Americans would eventually be infected by COVID-19 and some 2.2 million Americans would perish. Even models that assumed near [perfect social distancing](#) over-estimated fatalities by multiple factors. One of the problems with the models is that they had the benefit of a reasonable numerator, but not a reliable denominator. As [Dr. John P.A. Ionnidis](#), professor of epidemiology at Stanford University School of Medicine, put it: “Patients who have been tested for [COVID-19] are disproportionately those with severe symptoms and bad outcomes... We don’t know if we are failing to capture infections by a factor of three or 300... Reported fatality rates ... are meaningless.” The denominator could be quite high. A recent antibody study conducted by [Stanford University](#) of 3,330 residents of Santa Clara County, California found that the number of citizens who had contracted the virus was 50-85 times the number confirmed by county health officials. While these findings can’t be applied to the nation as a whole, it could mean that the little over [one million](#) confirmed cases of COVID-19 could represent a very small fraction of actual cases — suggesting a COVID-19 mortality rate significantly lower than assumed by modeling. Having a better grasp of the denominator is critically important because the public health policies one chooses for a highly contagious, but less deadly virus will necessarily be different from those one chooses for more deadly virus. Recommendations: 1.

*Stop basing policy on models alone.* 2. *Accelerate the search for the denominator.* Expanding testing for COVID-19 antibodies will not only help us determine how widely the virus has spread and help us better estimate the mortality rate, but also help guide personal behavior. An individual testing positive for COVID-19 antibodies may, for example, presents fewer risks to vulnerable populations. 3. *Remove the incentives for overcounting COVID-19 deaths.* The CARES Act authorizes Medicare to [add an additional 20%](#) to its regular hospital payments for the treatment of COVID-19 patients. At the same time, CDC guidance on reporting [fatalities](#) states “it is acceptable to report COVID-19 on a death certificate as ‘probable’ or ‘presumed.’” The 20% add-on should be rescinded while CDC guidance should be revised to limit listing of COVID-19 to confirmed cases. 4. *Shift from a test “all Americans” strategy to a sample-based testing and tracing protocol.* Sample testing, which would involve far fewer actual tests, but whose results provide better data for limiting infection, will allow state and local jurisdictions to identify COVID-19 and future pandemic hotspots. Identification of hotspots allows for improved tracking and tracing of infected individuals and also provides for more efficient use of state regulations that limit human movement as well as economic activity – the kind of restriction that communities will welcome and will be more consistent with constitutionally-protected liberties. Contact sampling and tracing activity are a standard part of CDC’s infectious disease containment efforts and its funding should be enhanced.

**Staying focused on the Big Picture.** American policy must never focus on a single problem to the exclusion of all others. While the deaths due to COVID-19 are tragic, they are no more tragic than deaths occurring due to suicide, heart attack, stroke, alcoholism and drug abuse caused by the economic shutdown and government violations of individual liberty. The economic shutdown has increased death from other causes as unemployment is highly associated with



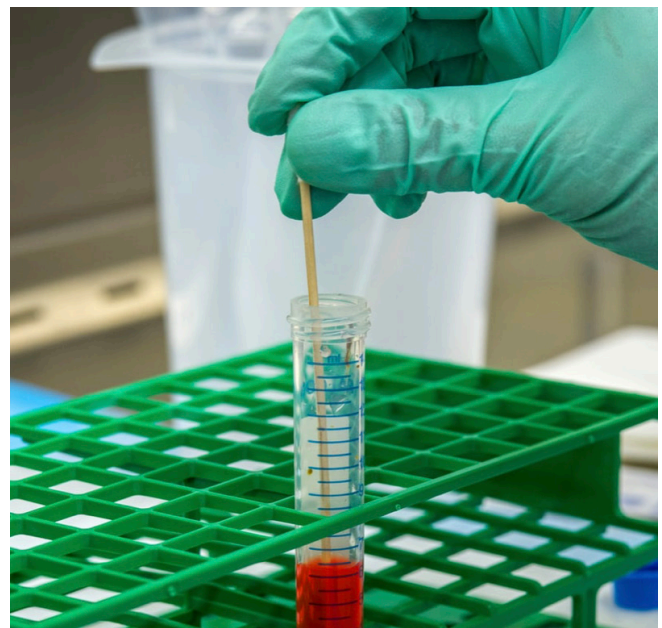
increased death risk. Involuntary unemployment doubles the risk of [stroke](#) among older Americans, and men unemployed for 90 days or more face a 15-30% increased incidence of heart attack. For every 1% increase in unemployment, there is a 3.3% increase in the incidence of drug overdose and a 0.99% increase in suicides. An unemployment rate of 32% would translate into an estimated 77,000 additional deaths from drug overdose and suicide. A good public health policy is one that is focused on reducing overall fatalities not just fatalities from a single cause. 1. *COVID-19 policies must be subjected to a rigorous cost-benefit analysis before implementation.*

**Get the FDA and CDC out of the lab testing business.** The [FDA](#)'s onerous testing requirement for diagnostic testing delayed production of COVID-19 tests by the private sector. This left the U.S. woefully unprepared to address the pandemic. It is not clear that the FDA even has statutory authority to regulate testing. The FDA is empowered to regulate devices, but laboratory tests are not devices. [Uncertainty](#) over whether the FDA might exercise its regulatory oversight significantly delayed the development of COVID-19 tests by the private sector. Recommendation: 1. *Lab developed tests created at Clinical Laboratory Improvement Amendments-certified labs should be permitted without FDA approval.* The Centers for Medicare and Medicare Services (CMS) is responsible for making sure labs meet federal standards outlined in the [Clinical Laboratory Improvement Amendments](#)

[of 1988](#). So long as labs are CLIA-certified, laboratory developed tests should be allowed to be marketed without any other approval.

**Reopening Universities.** Maintaining social distancing of young adults is simply not sustainable. Returning low-risk, socially-active students to campuses away from higher-risk family members will slow the spread of the virus. While switching courses to online formats made a good deal of sense from a public health perspective, sending students home from colleges in far-flung locations – least of all after spring break – did not. A case in point: Purdue University sent its students off on spring break on March 13, 2020, two days after the WHO declared COVID-19 a pandemic. Four days later, it recalled its students – including those visiting COVID-19 hotspots – to clear out their dormitories and return to their homes, possibly spreading the virus further. Recommendation: 1. *Re-open all colleges for the fall semester.*

**Reversing health care central planning.** Government central planning of health care made addressing the pandemic more difficult. Hospitals had fewer beds than needed, for example, due to government policy. For the past 46 years, health care policy has been focused on reducing the number of hospital beds.



It all began with something called “[Roemer’s Law](#),” named after Dr. Milton Roemer. He was instrumental – ironically enough – in the creation of the WHO. Roemer’s Law states that “A built bed is a filled bed” ... ergo, if we wish to reduce the number of hospital admissions and health care costs, we need to reduce the number of hospital beds. By that logic, instead of sending the U.S. Navy ship U.S.N.S. Comfort to New York City, the city could have removed existing beds in its hospitals and *voila*... there would have been no COVID-19 patients. Roemer’s law is the basis for such policies as “certificate of need” laws, which make it illegal for hospitals to add or buy new equipment without permission of a state agency. These laws both allow politically-powerful health care providers to limit competition and jack up prices while creating a shortage of important equipment like beds. [Thirty-five](#) states currently have certificate of need laws, and they are one of the reasons why the U.S. has among the lowest number of hospital beds in the industrialized world at [2.9 per 1,000](#). By contrast, France has 6.5 per 1,000, Germany has 8.3 per 1,000 and even Italy beats the United States at 3.4 per 1,000. The shortage of hospital beds, medical equipment and medical personnel has also been caused, in part, by consolidation of health care systems necessitated by expansion of government programs. Much of the costs associated with these programs have been shifted onto private health care systems and increased burdens. Hospital systems have been forced to seek greater economies of scale in order to meet the increased costs. Passage of the [Affordable Care Act](#) (Obamacare) accelerated that consolidation across the health sector. Further complicating efforts to provide care during the COVID-19 pandemic have been regulations that tie the hands of available medical professionals, such as licensing restrictions to prohibit service across state lines and scope of practice laws and those that require at-risk patients to visit their doctors for assessment or their pharmacies to obtain their prescriptions. Recommendations: 1. *Repeal certificate of need laws.* 2. *De-couple government and private health care and shift costs*



*of public programs back to government.* 3. *De-couple Health Savings Accounts (HSAs) from high-deductible health plans and allow any American to establish an HSA.* 4. *Expand HSA-eligible expenses to include personal protective equipment and, for the at-risk population, ventilators and other medical equipment.* 5. *Reduce restrictions on telemedicine.* 6. *Permit licensed health care professionals to provide services across state lines to permit care where there are shortages.* 7. *Permit health care policies to be sold across state lines to expand coverage and lower costs.* 8. *Reform scope of practice laws to give health care professionals, such as nurse practitioners, greater flexibility to provide care during pandemics and other medical crises.* 9. *Permit controlled pharmaceuticals to be securely shipped to high-risk patients.*

**Rolling back regulations that spread the virus or impede response.** The COVID-19 pandemic should prompt us to re-evaluate a long list of regulations, including those discouraging disposable products that contributed to the virus’s spread or hindered efforts to promote social distancing. Reusable shopping bags, used widely due to surcharges or outright bans of disposable plastic shopping bags, were believed



to be possible [transmission points](#) for the virus, and a number of states responded by temporarily [banning](#) their use. Major coffee retailers, including [Starbucks](#), temporarily suspended refills in reusable cups – believing that customer cups could spread the disease to staff and other customers. Hand-dryers, which replaced paper towels in many public restrooms in the interest of sustainability, suck up germs and bacteria in the air and deposit them on freshly washed hands. A [University of Connecticut and Quinnipiac University](#) study found that a petri dish exposed to bathroom dryers for 30 seconds grew up to 254 colonies of bacteria. The reason? Each time a toilet is flushed, it aerosolizes a mist of microbes which can spread to as far as 65 square feet. So-called “smart growth” policies instituted by many urban centers to prevent urban sprawl, make cities more “climate resilient” and preserve green spaces enforce high-density housing. COVID-19, however, has been particularly virulent in tightly-packed cities such as New York, Detroit and Chicago. High-density housing enables a pandemic to spread rapidly, infecting more people and causing more deaths. Similarly, over-reliance on public transportation comes at a cost. Tightly-packed subway cars and buses provide an ideal environment for a virus to spread. In New York, at [least 98](#) Metropolitan Transit Authority employees have died from COVID-19 and the transmission risk from public transportation became so great that [New York Governor Andrew Cuomo](#) ordered the subway system closed for an aggressive cleaning. Meanwhile, regulations mandating in-person purchases make social distancing efforts difficult. Many jurisdictions had such restrictions on alcohol, tobacco products and — in New York — on car purchases. Such restrictions didn’t make sense even before COVID-19, yet they made it impossible for many Americans – including those in vulnerable populations – to make necessary purchases. COVID-19 is not the first virus to endanger public health, and it won’t be the last. At-risk populations should never be compelled to make their purchases in-person and risk their

personal safety. Some regulations, including “Know Your Customer” banking regulations and hunting restrictions have made it difficult for many to make ends meet. Recommendations: 1. *Permanently lift the ban on disposable products, including plastic bags, paper cups and paper towels.* 2. *Rethink smart growth policies that increase population density.* 3. *Eliminate federal subsidies for public transportation.* 4. *Permanently eliminate restrictions on take-out and mail orders of alcoholic beverage.* 5. *Permanently eliminate restrictions on mail-order purchases of tobacco products.* 6. *Permanently eliminate other government-mandated in-store purchasing requirements.* 7. *Ease hunting restrictions to allow families to supplement their food supplies.* 8. *Rescind “Know Your Customer” (KYC) rules.* KYC rules require financial institutions to conduct extensive, expensive and lengthy investigations of customers to ensure that they are not involved in money laundering activities. These rules are one of the primary reasons that many of the neediest small businesses were unable to secure PPP loans. Fearing that they may run afoul of KYC rules, many of the largest banks approved loans for known existing customers. They must be rescinded.

### Putting pandemic experts in the back seat.

Daily briefings led by infectious disease experts will continue to heighten fear over COVID-19 and delay economic recovery. While these experts should still play a crucial role in helping the Trump Administration craft COVID-19 policy, it is time they take a back seat.



Recommendation: 1. Replace pandemic experts with economic experts at White House briefings.

**Providing relief to small business to jump start the economy.** Small businesses are the engines of the economy, but onerous regulations will hinder their ability to create new jobs once the economy is reopened. Independent contractor statutes that establish overly-broad definitions of “employee,” and thus limit the ability of a person to be an independent contractor, for example, will slow the recovery. To be considered an “Independent Contractor” in California, workers must not only show that they set their own work hours and own an independent business, but that they provide services to another company that are outside its core functions. Using such criteria, few could qualify as independent contractors. This is important, as being designated an “employee” adds 20%-30% to labor costs as employers are required to pay Social Security and Medicare taxes, unemployment and disability insurance, workers’ compensation and other expenses. It is essential as the U.S. economy ramps up that as many individuals as possible be encouraged to seek out private sector employment support regardless of whether they are considered legally to be “employees.” Enforcement of the Fair Labor Standards Act (FLSA) also unduly burdens employers with costs at a time they need to hire as rapidly as possible. FLSA is the

federal law that established the minimum wage, overtime pay requirements, record keeping and child labor standards affecting both full-time and part-time workers in both the private and public sectors. In January, the U.S. Department of Labor authorized increases in penalties for violations of FLSA standards of up to \$2,014 per violation. The agency ordinarily defines violations on a per person basis, meaning that each employee paid by the employer would constitute a separate violation. FLSA will smother job creation requiring employers to be more worried about compliance than bringing as many workers into the private sector as possible. The Davis-Bacon Act is another regulation that raises the costs of doing business and would slow economic recovery. The law requires that all government-contracted construction projects pay the “prevailing, local wage.” This adds about 20% to the costs of such construction projects. The economic shutdown has left many small businesses in dire financial shape and prevented many from meeting their tax obligations. They should not be penalized for problems that were not their creation. Finally, as businesses reopen, employers – who have carefully followed federal and state guidelines on worker safety – should be shielded from liability resulting from class-action claims and other lawsuits filed by trial lawyers. Businesses, including health-care providers and makers of personal protective equipment, should

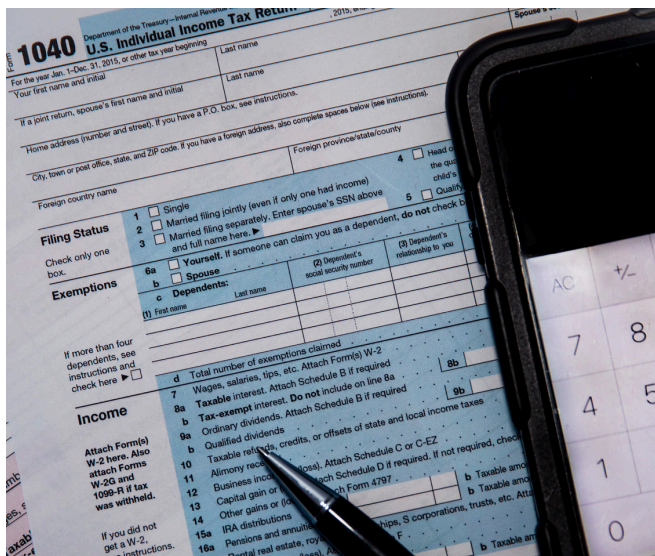




not be targeted by trial lawyers eager to cash-in on a national disaster – particularly one caused by a hostile foreign power. This should not apply to businesses that willfully engage in negligent practices; instead, the liability protection should cover law-abiding businesses that reopen in a challenging environment. Recommendations: 1. *Condition federal aid to states on their waiver of or repeal of overly-onerous Independent Contractor statutes.* 2. *Waive FLSA requirements for all companies of 150 or less for a period of 180 days.* 3. *Repeal the Davis-Bacon Act.* 4. *Provide IRS relief for small businesses affected by COVID-19.* Small business with at least five employees should be eligible for relief from liens and penalties provided they commit to hiring or maintaining their previous work for 180 days. 5. *Extend liability protection to law-abiding businesses reopening in the wake of the COVID-19 lockdown.*

**Focusing pandemic relief programs on COVID-19 rather than the redistribution of wealth.** The \$2.2 trillion CARES Act included hundreds of billions of dollars in spending having little to do with addressing the COVID-19 pandemic or its economic fall-out. Money spent on wasteful government spending necessarily means it isn't available for the COVID-19 crisis. Even some of the better provisions, such as the PPP, included redistributive provisions. The PPP provides forgivable loans to businesses that retain

employees during the economic shutdown, but the plain language precludes businesses from using the funding for employees earning \$100,000 or more. Employers are therefore incentivized to let higher-wage employees go while retaining lower-wage ones. The CARES Act also provided an extra \$600 per week in unemployment benefits for all employees, regardless of their ordinary income levels. As a consequence, millions of the unemployed may earn more in benefits than they would ordinarily receive on the job. And the CARES Act provided \$1,200 in direct payments to individuals (\$2,400 for couples filing jointly, plus \$500 for each dependent child), but phased those payments out beginning at incomes of \$75,000. Americans are receiving payments regardless of whether they've been negatively affected by the COVID-19 crisis. A grocery store clerk still on the job earning \$25,000, for example, will receive \$1,200, but the owner of a cleaning service who ordinarily earns \$95,000 who has been forced to shutter his business, will receive nothing. Such massive government spending will jeopardize long-term economic progress. Recommendations: 1. *Federal economic relief efforts should be single-mindedly focused on mitigating the economic crisis, not advancing a redistributive agenda.* 2. *Create a Blue Ribbon "Back to Work" Commission with a mandate to report by August 1<sup>st</sup> on any and all recommended rules and regulations that should be repealed or waived in order to jump-start economic growth.* 3. *In order to encourage investment, the U.S. Department of the Treasury should issue a 24-month waiver of the federal capital gains tax and index capital gains taxes to the inflation rate.* 4. *Prohibit any future COVID-19 relief from being used to pay for state unfunded public pension liabilities.* The problems associated with unfunded pension liability in such states as Illinois, California and New Jersey predated the outbreak of the pandemic. Taxpayers already reeling from the consequences of the prolonged lockdown, should not be held responsible for ill-considered policies of states that have promised and spent beyond their means, and have refused to address problems of their own making.



## Recommendations Recap

1. Establish a dedicated U.S. Department of Justice team to investigate COVID-19-related state and local regulations that may violate constitutional rights.
2. Require state and local governments to narrowly tailor COVID-19 restrictions as a condition of any direct aid.
3. End the Paycheck Protection Program.
4. Consider a much more modest forgivable loan program to protect the jobs of those most at-risk from COVID-19.
5. Create a special federal court to address COVID-19-related takings cases.
6. Limit new government-to-government assistance to collateralized loans.
7. Restrict federal funds to states that fail to assist the federal government in limiting COVID-19 risks from non-residents unlawfully in the U.S.
8. Repeal state renewable energy standards.
9. End the federal Renewable Fuel Standard.
10. Relax federal Home Appliance Standards.
11. Step up Food and Drug Administration and Consumer Product Safety Inspections in China.
12. Extend the ban on travel between the U.S. and China.
13. Have the United States sue China for damages at the International Court of Justice.
14. Expand Committee on Foreign Investment in the United States (CFIUS) scrutiny of Chinese investments.
15. Amend the Foreign Sovereign Immunities Act to allow Americans to bring suits against China.
16. Keep the Jones Act.
17. Develop alternatives sources of critical medical supplies, pharmaceutical supplies and rare earth minerals.
18. Invoke the International Emergency Economic Powers Act to prevent further investments in China relating to critical supplies.
19. Remove U.S. regulatory impediments to the development of domestic rare earth minerals.
20. Terminate all funding to the World Health Organization until the director-general and the executive director are replaced by true reformers and withdraw from WHO altogether, if no housecleaning takes place.
21. Stop basing policy on models alone.
22. Accelerate the search for the denominator in models.
23. Remove the incentives for overcounting COVID-19 deaths.
24. Shift from a test “all Americans” strategy to a sample-based testing and tracing protocol.
25. Subject COVID-19 policies to a rigorous cost-benefit analysis before implementation.
26. Allow lab developed tests created at Clinical Laboratory Improvement Amendments-certified labs to be permitted without FDA approval.
27. Reopen all colleges for the fall semester.



28. Repeal certificate of need laws.
29. De-couple government and private health care and shift costs of public programs back to government.
30. De-couple Health Savings Accounts from high-deductible health plans and allow any American to establish an HSA.
31. Expand HSA eligible expenses to include personal protective equipment and, for the at-risk population, ventilators and other medical equipment.
32. Reduce restrictions on telemedicine.
33. Permit licensed health care professionals to provide services across state lines to permit care where there are shortages.
34. Permit health care policies to be sold across state lines to expand coverage and lower costs.
35. Reform scope of practice laws to give health care professionals, such as nurse practitioners, greater flexibility to provide care during pandemics and other medical crises.
36. Permit controlled pharmaceuticals to be securely shipped to high-risk patients.
37. Permanently lift the ban on disposable products, including plastic bags, paper cups and paper towels.
38. Rethink smart growth policies that increase population density.
39. Eliminate public subsidies for public transportation.
40. Permanently eliminate restrictions on take-out and mail orders of alcoholic beverage.
41. Permanently eliminate restrictions on mail-order purchases of tobacco products.
42. Permanently eliminate other government-mandated in-store purchasing requirements.
43. Ease hunting restrictions to allow families to supplement their food supplies.
44. Rescind “Know Your Customer” rules.
45. Replace pandemic experts with economic experts at White House briefings.
46. Condition federal aid to states on their waiver of or repeal of overly-onerous Independent Contractor statutes.
47. Waive FSLA requirements for all companies of 150 or less for a period of 180 days.
48. Repeal the Davis-Bacon Act.
49. Provide IRS relief for small businesses affected by COVID-19.
50. Provide liability protection to law-abiding businesses reopening in the wake of the COVID-19 lockdown.
51. Ensure that federal economic relief efforts are single-mindedly focused on mitigating the economic crisis, not advancing a redistributive agenda.
52. Create a Blue Ribbon “Back to Work” Commission with a mandate to report by August 1<sup>st</sup> on any and all recommended rules and regulations that should be repealed or waived in order to jump-start economic growth.
53. Encourage investment by having the Treasury Department issue a 24-month waiver of the federal capital gains tax and index capital gains taxes to the inflation rate.
54. Prohibit any future COVID-19 relief from being used to pay for state unfunded public pension liabilities.



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- ✓ Environmental Policy
- ✓ Regulatory Policy
- ✓ Government Accountability and Legal Reform
- ✓ National Defense
- ✓ National Sovereignty

And emerging issues such as COVID-19 and how to restore and rejuvenate liberty, the economy and health care in the wake of this pandemic while laying a foundation for properly addressing future crises.

Responding quickly to issues that suddenly appear on the policy stage is a hallmark of the National Center's work.