



# The Zika Negotiation

*Why Did Congress Fail to Act?*

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On September 28th, after eight months of negotiations, Congress passed a \$1.1 billion funding package to aid in the prevention and fight against Zika. Over the past year, Zika infected thousands across Central and South America, eventually reaching the United States in early 2016. Almost immediately, the Obama administration requested \$1.9 billion in emergency funding from Congress in order to combat the growing Zika threat. Like the Congressional responses to H1N1, MERS, and Ebola, the Zika response should have been predictable: a virus threatens our neighboring countries, the President requests emergency funding from Congress, Congress passes a bill soon after, the disease's spread is controlled within the U.S.

Only, that didn't happen. For eight months Congress failed to pass any sort of funding measure – forcing the White House to redirect funds from ongoing Ebola prevention in order to address Zika. All the while, the virus infected hundreds of pregnant women in the U.S. and caused dozens of infants to be born with microcephaly, the Zika-induced neurodevelopmental birth defect. Why did

Congressional negotiations to pass a Zika-funding measure fail, despite the near universal bipartisan consensus that such a bill was desperately needed to save lives? How did such an important agreement veer off track, even though Congress is composed of hundreds of skilled negotiators? Most importantly, what can we learn from Congress' failure in order to ensure that the U.S. is better equipped to address the next pandemic?

## The Price of 'Time Costs'

Skilled negotiators often leverage time costs and deadlines to their advantage. With time costs, the longer the negotiation progresses, the more penalties one or both parties will suffer. As a result, the party with a lower tolerance for time costs tends to make more concessions in order to close the deal rapidly.

Yet despite the time cost associated with delaying passage of Zika legislation, neither Democrats nor Republicans were willing to concede in the fight over funding. Democrats wanted the President's original request, while Republicans wanted less funding with certain provisions attached to the bill – all while the virus continued to infect Americans

at an increasing rate. This is one of the dangers of time costs – if both parties believe that they have the upper hand, they can become emboldened in their position and refuse to concede, while the cost of failing to reach a deal slowly hurts both sides.

One way negotiators could have avoided the cycle of escalating brinkmanship that comes with time costs, was for each side to have clearly formulated a reservation-point before the negotiation began. Had they known exactly what they were willing to sacrifice in order to have gained concessions from the other party, they could have planned their approach to the entire negotiation. If even a small cost burden (i.e. a single life lost) was unthinkable, they should have approached the table with a sense of urgency and plan to close quickly. Had they been able to withstand high time costs (i.e. multiple infections of pregnant mothers), planning for a longer negotiation may have allowed them to claim more value.

### **The Dangers of Bundling**

One of the problems with single-issue negotiations is that the ZOPA (Zone of Possible Agreement) is often limited. On the other hand, in multi-issue negotiations, parties can *bundle* distinct issues together into a single package in order to widen the ZOPA. In the battle over Zika legislation, Democrats insisted that proposals should singularly revolve around funding. But after the President's initial monetary request, Republicans countered with a multi-issue bundle that included provisions ranging from defunding Planned Parenthood to reversing a ban on the flying of Confederate flags in military cemeteries. After Democrats voted down that bundled proposal and Republicans refused to revise it, they reached a stalemate.

The problem with proposing a multi-issue bundle at a previously single-issue table is that when one party brings new, independent issues into the negotiation, they can become “sticky” in the minds of those who proposed them. If one side refuses to consider additional issues – as Democrats did – the end-result will be viewed as a disappointment to those expecting a bundled deal. By proposing a

bundled package and then not achieving gains on any of the other issues, Republicans were primed to view the entire deal as a failure.

When they transformed a single-issue negotiation into a multi-issue negotiation, negotiators should have been mindful of the bundle they were proposing. Bundles must contain issues that *both* sides are willing to discuss; otherwise they become barriers rather than conduits to creative solutions. Instead of bundling issues involving women's health and confederate flags, Republicans could have crafted a bundle out of various funding sources, such as shifting dollars from Ebola prevention or other aid-related funds, to achieve a better outcome.

Furthermore, bundling to ‘expand the pie’ is not just about *what* is contained in the package, but also about *how* the package is created. Both sides should have considered forming the bundle together, which would have created group buy-in and ownership over the outcome. After the initial bipartisan negotiation with a tentative agreement on a funding plan, Republicans discussed the issue within their caucus and returned to the table with an unexpected multi-issue proposal. To ensure the best deal, both parties should have had constant communication not just at the table, but throughout the entire process.

### **The Power of Framing**

Why was Ebola funding easily passed through Congress in 2014 while Zika stalled for months? Perhaps the answer lies not in the content of each negotiation – the funding, the bundles, the time costs – but in the way each disease was *perceived*.

Framing, or the particular lens through which parties view issues, often has a substantial effect on the process and outcome of a negotiation. In 2014, images of Ebola covered the airwaves: African countries were ravaged by the disease, bodies piled up by the dozens. Though the hysteria surrounding Ebola was considered by

experts to be unfounded, it *framed* the issue as one of urgent life-or-death: if Congress did not fund Ebola prevention, what happened in Africa could easily happen in the United States. Yet the public's perception of Zika was of a virus that was slow moving, confined to far-away countries, and merely problematic, rather than lethal. As President Obama said in February, Zika "is not like Ebola, people don't die of Zika – a lot of people get it and don't even know that they have it."

By framing Zika as less worrisome than other pandemics, the urgency for funding was reduced. That's not to say that the White House should have created a culture of alarmism surrounding Zika. On the contrary, unnecessary fear often confounds negotiations. Yet had Zika been framed as a virus that primarily affects our most vulnerable populations – children and pregnant mothers – Congress might have generated the momentum needed to act quickly. Had the framing focused on economic responsibility (i.e. caring for children with microcephaly would cost millions of future taxpayer dollars), members of Congress might have viewed the bill differently.

Framing does not only affect how each side perceives issues, but also how they approach *each other*. Given the current Republican majority, Democrats might have approached House Leadership early, offering various incentives like full credit to facilitate the passage of the bill. Alternatively, Democrats could have created a coalition with key Southern Republicans (which are adversely affected by Zika) to sponsor the legislation themselves, bolstering their reelection chances in November.

### **The Next Pandemic...**

Why, after eight months, negotiations over Zika funding finally succeeded, will remain the object of speculation. Perhaps the time costs that Zika imposed had simply become too high, or Republicans realized the futility of a bundled proposal. Maybe the psychological frame surrounding Zika had shifted in Congress' mind, or the way Congressman approached the negotiation became more collaborative. Regardless of the reason, the lessons from the prolonged Zika negotiation need to be taken to heart – or the next pandemic will be much more painful than just a mosquito bite.