



The Daily Dish

Viral Vocabulary

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The coronavirus has created a certain brain fog among politicians. Not [that](#) kind of brain fog. This is more of a viral attack on vocabulary. The most prominent example is the president's declaration on [60 Minutes](#): "The pandemic is over. We still have a problem with Covid. We're still doing a lot of work on it. It's – but the pandemic is over."

No, the COVID-19 pandemic persists – it is an uncontrolled outbreak that is global in scale. Indeed, the United States suffers a COVID-19 epidemic – a national outbreak that is uncontrolled. Finally, COVID-19 is not yet endemic – a situation in which the disease is consistently present but limited so that the spread and rates of infection are predictable. So, global pandemic? Yes. National epidemic? Yes. Endemic? No.

But it is important to note that the *emergency* is over. It is the reality that COVID-19 no longer inflicts emergency-level disruption on American family, social, and economic life. (Political life is another matter, however.) Unfortunately, the public health emergency (PHE) is not over, having been renewed every 90 days since first being declared in January 2020.

Recall: "Under Section 319, which was [added](#) to the PHSA [Public Health Service Act] in 1983, the HHS secretary can determine that a disease or disorder, including those caused by a bioterrorist attack, presents a PHE. There is no law or rule that specifies a necessary threshold of urgency or severity, or even a definition, under which to declare a PHE, leaving broad authority to the secretary."

The bottom line is that since there is no established threshold of urgency or severity that constitutes a PHE, nor a legal definition, the president can declare the emergency over, yet the Secretary of Health and Human Services can leave the PHE in place. But why? The simple answer is: power.

Under many statutes, declaration of a PHE automatically triggers the transfer of additional power to the executive branch. (The same is true for many state-level emergency declarations.) The PHE declaration was central to forcing insurers to cover the cost of COVID testing, for example. And, as we have [seen](#), the president used the declaration of a PHE as the means to bootstrap the 2003 HEROES Act – intended to aid the education efforts of those who have served their country in a military capacity – into the vehicle for broad-based student loan forgiveness. It's great to be king, even in a country founded on the notion that kings are inherently dangerous and that the will of the people is the only moral justification for ruling.

So, the "pandemic is over," but don't believe for a second that the Biden Administration will give up its ability to bypass Congress and avoid transparent scrutiny of policy initiatives.