NOTE

CONSERVATION AND ECONOMIC RECOVERY: TELLING THE STORY OF THE GREAT AMERICAN OUTDOORS ACT OF 2020

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I. Introduction

While public land management was not a key theme of President Donald J. Trump's 2016 campaign for the White House, the recent passage and signing of the 2020 Great American Outdoors Act[1] cemented President Trump's legacy as one of the most consequential presidents in the history of American public land policy.

The new legislation does two major things. First, the Act establishes a National Parks and Public Land Legacy Restoration Fund—financed by federal energy development revenues—to address the billions of dollars of deferred maintenance in America's national parks, wildlife refuges, and elsewhere. And second, the Act permanently and fully funds the Land and Water Conservation Fund ("LWCF"), a program that supports the "protection of . . . public lands and waters" while encouraging "voluntary conservation on private land."[2] This Note will discuss both of these policies, looking section-by-section through the newly enacted legislation.

The legislative history for this specific bill is relatively short, but its two major policies were not original ideas. Indeed, as an example, permanent funding of the LWCF has long been an objective of many conservation advocates. And although a Republican senator introduced and championed the bill, and a Republican president signed it into law, the Great American Outdoors Act was far from the gold standard for conservatives. This Note will recount the multiple issues that Republican legislators and conservative outside groups had with the legislation ahead of its passage.

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[1] Great American Outdoors Act, Pub. L. No. 116-152, 134 Stat. 682 (2020).

[2] *Land and Water Conservation Fund*, U.S. Dep't of the Interior, https://www.doi.gov/lwcf [https://perma.cc/8PGN-ASN4].

Moreover, this Note argues that the Great American Outdoors Act was not just a conservation bill. Rather, one can also view the Act as a piece of economic legislation enacted amid the unemployment spikes at the beginning of the coronavirus pandemic in the United States. The context of the Act's passage bears some resemblance to the circumstances predating the establishment of the Civilian Conservation Corps ("CCC") during the Great Depression, and understanding the Great American Outdoors Act as somewhat analogous to the CCC helps illuminate its legislative history and better explain its enactment.

Ultimately, the Great American Outdoors Act represents an impressive legislative accomplishment for Congress and President Trump in a time of divided government. And on the heels of the 2019 John D. Dingell, Jr. Conservation, Management, and Recreation Act,[3] the 116th Congress demonstrated an uncanny knack for getting public lands legislation across the finish line in a bipartisan way. Still, valid concerns remain about accountability of appropriated funds and the federal government's ability to keep up with the maintenance of its land estate. Part of the Act's long-term legacy may be its economic impact as the United States rebuilds its economy after the outbreak of COVID-19.

II. A Legislative History of the Great American Outdoors Act of 2020

A. Pre-2020 Developments

The end of the Second World War, and the post-Great Depression economic recovery, brought about an increase in Americans' use of, and appreciation for, public recreation spaces.[4] In the 1940s and the 1950s, "Americans turned to recreational pursuits both traditional and new—from picnicking to rafting in war surplus rubber rafts or skiing on surplus ski equipment."[5] With the public demanding conservation policy that reflected its newfound interest in the great outdoors, Congress responded in 1958 by establishing an Outdoor Recreation Resources Review Commission ("ORRRC") to study the issues and make recommendations on what legislative measures would be appropriate in this space.[6] In January 1962, the ORRRC delivered its report to President John F. Kennedy, recommending "a national outdoor recreation policy, including a dedicated source of Federal funding

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[3] John D. Dingell, Jr. Conservation, Management, and Recreation Act, Pub. L. No. 116-9, 133 Stat. 580 (2019).

[4] George H. Siehl, *The Policy Path to the Great Outdoors: A History of the Outdoor Recreation Review Commissions* 1–2 (Res. for the Future, Discussion Paper No. 08-44, 2008), https://foresthistory.org/wp-content/uploads/2017/01/RFF-DP-08-44.pdf [https://perma.cc/VF9V-Z76X].

[5] *Id.*

[6] *Id.* at 2.

for outdoor recreation resources and comprehensive State planning for recreation."[7] To carry out this recommendation, Congress established the Land and Water Conservation Fund in 1965.[8] The LWCF set out to accomplish its mission in two ways: "by (1) providing funds for and authorizing Federal assistance to the States in planning, acquisition, and development of needed land and water areas and facilities and (2) providing funds for the Federal acquisition and development of certain lands and other areas."[9] Also in response to the ORRRC report, Congress and President Kennedy created a Bureau of Outdoor Recreation within the U.S. Department of the Interior.[10]

At the beginning, "the funding for the LWCF was to come from only two identified sources: fees collected from users of public recreational facilities and revenue generated from the sale of federal surplus lands."[11] But that is not where most of the LWCF's money comes from today. Congress later amended the law to allow for the deposit of "taxes on motorboat fuels and proceeds received from federal leases of offshore oil and gas exploration and extraction pursuant to the Outer Continental Shelf Lands Act" into the fund.[12] As one academic writes,

> [s]ince 1968, the [LWCF's] major source of revenue has been the mineral leasing receipts generated by oil and gas drilling on the Outer Continental Shelf. This shrewd political move not only provides a lucrative wellspring of money, it also assuages a great deal of congressional guilt by allowing mineral exploitation to fund land and water conservation.[13]

The premise is simple: public lands and waters are for both the benefit *and* enjoyment of the people, to borrow a famous phrase from President Theodore Roosevelt.[14] As such, part of the benefit (a portion of the revenues from energy development) funds the enjoyment (safeguarding American "natural areas, water resources and cultural heritage, and [providing] recreation opportunities to all Americans"[15]).

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[7] S. REP. NO. 115-428, at 3 (2018).
[8] *Id.*
[9] Land and Water Conservation Fund Act of 1965, Pub. L. No. 88-578, § 1(b), 78 Stat. 897, 897 (1964).
[10] *See* Siehl, *supra* note 4, at 5.
[11] Owen Demuth, *Sweetening the Pot: The Conservation and Reinvestment Act Reignites the Property Rights/Land Conservation Debate for the Twenty-First Century*, 50 BUFF. L. REV. 755, 760 (2002).
[12] *Id.*
[13] Sara Dant, *LBJ, Wilderness, and the Land and Water Conservation Fund*, FOREST HIST. TODAY 16, 18–19 (2014), https://foresthistory.org/wp-content/uploads/2016/12/2014_Dant_LBJWilderness.pdf [https://perma.cc/Q7M3-H4EQ].
[14] *The Last Refuge*, PBS, http://www.pbs.org/nationalparks/history/ep2/4/ [https://perma.cc/K5EL-8K2F].
[15] *See LWCF Overview*, U.S. DEP'T OF THE INTERIOR, https://www.doi.gov/lwcf/about/overview [https://perma.cc/L9YE-Z7Z5].

Prior to the enactment of the Great American Outdoors Act, LWCF funds needed to be appropriated each year by Congress in the annual budget process, but the historical suggestion to fund the LWCF through revolving funds[16] supports the inference that mandatory funding—without the need for specific annual appropriations—was part of the program's original intent. Support for mandatory funding existed through the years, as "advocates cite[d] the certainty and predictability of program funding generally and in particular in fostering the ability of agencies to undertake multiyear, large-scale, and collaborative acquisitions."[17] But those opposed to permanent funding argued that Congress should have the ability to reassess its level of support for the LWCF in the context of other national needs. They also made the point that subjecting the LWCF to the yearly appropriations process would enhance congressional oversight of the Fund.[18] In addition, the use of LWCF money has been the subject of controversy; some have asserted that the primary appropriate utilization of the LWCF is maintenance of the public lands that the federal government already administers, while others seek to employ the LWCF for further federal land acquisition.[19]

The 1970s saw a shift in the administration of LWCF programs and the public perception of federal land policy. The coming-of-age of the Baby Boomer generation, technological advances, new venues for recreation, limited gasoline supplies, and a decline in the condition of federal recreational facilities all contributed to changes in how Americans both interacted with their natural landscape and urged their representatives to structure conservation funding programs like the LWCF.[20] At the outset, "states received the largest amounts of LWCF appropriations, but in the late 1970s the majority of LWCF funds shifted to federal land acquisitions."[21] Increasing federal control over public land, however, became a flashpoint of controversy in the latter part of the decade. Some key events occurred in July 1979: "an angry [Nevada] state legislature passed a law giving the state control of 49 million acres of federal land, the federal government refused to relinquish control, and the Sagebrush Rebellion was born."[22] Other Western states went on to consider similar legislation, "encouraged and supported by those who felt a growing frustration with federal bureaucratic regulations and restrictions."[23]

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[16] *See* Carol Hardy Vincent, Cong. Rsch. Serv., RL33531, Land and Water Conservation Fund: Overview, Funding History, and Issues 2 (2019), https://crsreports.congress.gov/product/pdf/RL/RL33531 [https://perma.cc/3JQC-R8XE].

[17] *Id.* at 20–21.

[18] *See id.*

[19] *See id.*

[20] *See* Siehl, *supra* note 4, at 1–2, 7.

[21] Robert Nelson et al., *5 Myths About the Land and Water Conservation Fund*, Prop. & Env't Rsch. Ctr. (Apr. 28, 2016), https://www.perc.org/2016/04/28/5-myths-about-the-land-and-water-conservation-fund/ [https://perma.cc/BL7R-QFE9].

[22] John Baden & Richard Stroup, *Political Economy Perspectives on the Sagebrush Rebellion*, 3 Pub. Land L. Rev. 103, 104 (1982).

[23] *Id.*

During his campaign for the presidency ahead of the 1980 general election, Ronald Reagan declared himself a member of the Sagebrush Rebellion, noting in a Salt Lake City, Utah speech, "I happen to be one who cheers and supports the sagebrush rebellion. Count me in as a rebel."[24] Reagan would be elected President in 1980, and he appointed Rebellion ally James Watt as U.S. Secretary of the Interior; "[e]ight months after Reagan was sworn in, Watt declared the rebellion over, given the administration's advocacy of its tenets and his efforts on its behalf."[25] Conservationists tussled with the Reagan administration over competing conceptions of the appropriate role of the federal government in public land management,[26] while those who believed in limited government cheered President Reagan and Secretary Watt.

Amid the period of transition from President Carter to President Reagan, a host of outside groups, "under the lead sponsorship of the American Forestry Association, participated in a National Conference on Renewable Natural Resources, held from November 30 to December 3, 1980, in Washington, DC."[27] The Conference ultimately issued a report recommending the creation of a congressional commission to survey the supply and demand for outdoor recreation.[28] But "[t]he new administration appeared to be no friend of recreation when [Secretary Watt] administratively terminated the Bureau of Outdoor Recreation (which had been renamed the Heritage Conservation and Recreation Service under a previous administration)."[29]

Senator Malcolm Wallop (R-Wyo.), however, sought to bridge the gap. As the new chairman of the Senate Subcommittee on Public Lands and Reserved Water, he brought together interested parties for "Wallop Workshops," hearings held in the Interior Committee Room throughout 1981 and 1982.[30] In contrast to a normal hearing, the heads of major conservation organizations chaired the workshops while "Senators participated as questioners and commenters."[31] Notably, "[a]fter the second hearing, the workshop chairs and organizer were invited to lunch with Secretary Watt to discuss follow-up actions to the workshops," where "the chairs proposed the creation of a new ORRRC to review the full spectrum of recreation concerns."[32]

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[24] David F. Salisbury, *Sagebrush Rebels See Open Range in Reagan's Victory*, Christian Sci. Monitor (Nov. 18, 1980), https://www.csmonitor.com/1980/1118/111828.html [https://perma.cc/GT4P-HBX7].

[25] Philip Bump, *That Time Ronald Reagan Joined a 'Rebellion'—but Still Couldn't Change Federal Land Laws*, Wash. Post (Jan. 4, 2016), https://www.washingtonpost.com/news/the-fix/wp/2016/01/04/even-sagebrush-rebel-ronald-reagan-couldnt-change-federal-land-use-in-the-west/ [https://perma.cc/G344-M6M4].

[26] *See* Siehl, *supra* note 4, at 7–11.

[27] *Id.* at 7.

[28] *See id.* at 8.

[29] *Id.*

[30] *Id.*

[31] *Id.*

[32] *Id.*

Secretary Watt, initially opposed to the creation of a new ORRRC, "eventually relented and agreed that such a new assessment might have utility."[33]

From there, Laurance S. Rockefeller, the chair of the original ORRRC, convened a review group that met from August 1982 to February 1983.[34] In its final report, the group made a number of findings and recommended creation of a new ORRRC.[35] At that point, "[a]rmed with this prestigious endorsement of an action they supported, a number of recreation interest groups approached Congress seeking legislative authorization of a new ORRRC."[36] Senator Wallop introduced a bill to this effect in April 1983, and Congressman Morris Udall (D-Ariz.) introduced a companion bill in the House of Representatives less than ten days later.[37] Senator Wallop shepherded the bill through the Senate, where it passed with unanimous consent.[38] Curiously, however, despite overwhelming bipartisan support, the bill stalled and eventually died in the House Subcommittee on Public Lands and National Parks.[39] The reasons for this peculiar outcome illustrate the fraught nature of achieving bipartisan victories in Washington, D.C.:

> The Subcommittee chairman, addressing a conservation luncheon group months later, was asked why the bill was allowed to die. He responded that he had no intention of allowing President Reagan a Rose Garden signing opportunity that might make him look good before the election. In addition, national environmental groups that were hostile to the Reagan administration may have urged the Subcommittee chairman to thwart the legislation because they feared what might come from a new commission with a perspective on resource management that might be broader than their own.[40]

The rise and fall of the bill occurred during the middle of 1984; it is understandable that Democrats in Congress were wary of giving President Reagan any possible boost ahead of the 1984 general election. Nevertheless, President Reagan rode to an overwhelming victory in 1984, carrying forty-nine states and accumulating 525 electoral votes.[41]

After his victory, President Reagan decided to take matters into his own hands on the commission.[42] He signed an executive order on January 28,

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[33] *Id.*
[34] *See id.* at 8–9.
[35] *See id.* at 9.
[36] *Id.*
[37] *See id.* at 9–10.
[38] *See id.* at 10.
[39] *See id.*
[40] *Id.* at 10–11.
[41] *See* Bernard Weinraub, *Reagan, Taking 49 States and 59% of Vote, Vows to Stress Arms Talks and Economy*, N.Y. Times (Nov. 8, 1984), https://www.nytimes.com/1984/11/08/us/reagan-taking-49-states-and-59-of-vote-vows-to-stress-arms-talks-and-economy.html [https://perma.cc/F8DY-ZXFH].
[42] *See* Siehl, *supra* note 4, at 11.

1985, establishing a Presidential Commission on Outdoor Recreation Resources Review; he tapped Tennessee Governor Lamar Alexander to be the Commission's chair.[43] Then-Governor Alexander renamed it the President's Commission on Americans Outdoors ("PCAO").[44] Among the PCAO's recommendations was a major one, relevant to the Note at hand: "At an absolute minimum, the fund should generate $1 billion per year."[45] Nearly thirty-five years later, Senator Alexander (R-Tenn.) was continuing to tout what he described as the Commission's recommendation that the LWCF be fully and permanently funded.[46]

As the twentieth century came to a close, the experience of the LWCF demonstrated the significant distinction between congressional authorization of funding for a certain program and actual funding of that program. By 2000, the LWCF had been in existence for over thirty-five years, but in only one of those years (1998) had it reached the authorized level of $900 million of funding.[47] In 1999, the Clinton administration saw an opening. That year, President Clinton announced what he called the Lands Legacy Initiative.[48] This Initiative was part budget proposal, part announcement of presidential priorities; perhaps the most significant aspect of the announcement was that President Clinton's FY2000 budget would call for the LWCF to receive its fully authorized level of funding at $900 million.[49] This was the first time in the history of the LWCF that a presidential administration called for Congress to fully fund the program.[50] President Clinton further "committ[ed] to work with Congress to create a permanent funding stream beginning in FY2001."[51]

There was bipartisan support for permanent funding of the LWCF. Senate and House Republicans included a call for permanent funding in an environmental agenda that they released a few months later to celebrate Earth

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[43] *See id.*

[44] *See id.*

[45] President's Comm'n on Americans Outdoors, Report and Recommendations to the President of the United States 200 (1986).

[46] *See, e.g.*, *Alexander Says U.S. Senate Is Considering the Most Important Conservation Legislation in 50 Years*, Chattanoogan.com (June 9, 2020), https://www.chattanoogan.com/2020/6/9/410303/Alexander-Says-U.S.-Senate-Is.aspx [https://perma.cc/3V9C-JDGR] (quoting a press release in which Senator Lamar Alexander stated that "[f]ully funding the LWCF was also a recommendation of President Reagan's Commission on Americans Outdoors, which I chaired in 1985").

[47] Jennifer Yachnin, *LWCF Full Funding Came Close Before. Will 2020 Be Different?*, E&E News (June 9, 2020), http://www.eenews.net/stories/1063355397 [https://perma.cc/U92Z-HYXK].

[48] *See President Clinton's Lands Legacy Initiative: Forging a Conservation Vision for the 21st Century*, White House Council on Envtl. Quality (Jan. 12, 1999), http://www.clintonwhitehouse4.archives.gov/CEQ/landslegacy2.html [https://perma.cc/Q8FJ-9DAJ].

[49] *See id.*

[50] *See id.*

[51] *President Clinton and Vice President Gore: A Historic Commitment to Preserving Our Lands*, White House Council on Envtl. Quality (Jan. 12, 1999), http://www.clintonwhitehouse4.archives.gov/CEQ/landslegacy.html [https://perma.cc/LM8D-K83U].

Day 1999.[52] Senator John Chafee (R-R.I.), then-Chairman of the Senate Committee on Environment and Public Works, stated at the time that Republicans "want to guarantee that $900 million goes in [to the LWCF] every year."[53] That session, in February 1999, House Natural Resources Committee Chairman Don Young (R-Alaska) introduced the Conservation and Reinvestment Act ("CARA"),[54] a bill that would fully fund the LWCF on a permanent and mandatory basis, removing the LWCF from the standard appropriations process.[55] The bill boasted bipartisan cosponsorship, including a sign-on from Representative John Dingell (D-Mich.).[56]

A few weeks later, House Natural Resources Committee Ranking Member George Miller (D-Cal.) introduced his own proposal, entitled the Resources 2000 Act.[57] No Republicans cosponsored this piece of legislation.[58] The bill was a "greener" proposal, but the goal of full and permanent funding for the LWCF remained.[59] Some environmentalists grumbled about the land acquisition restrictions in Representative Young's proposal, as well as other provisions of CARA.[60] But despite his introduction of the Resources 2000 bill, Representative Miller seemed interested in CARA, calling it "a welcome step toward a permanent federal commitment to public land acquisition."[61] And so, the stage was set for Representatives Young and Miller to work together on a public lands package that included the key LWCF-funding provision.

Getting Representatives Young and Miller to agree on language was quite a feat. Representative Young, a "conservative Republican," was not the most natural ally of Representative Miller, described as an "environmentalist."[62] But by November, the two were able to reach a "bipartisan agreement" on legislation to "guarantee[ ] stable and annual funding for the

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[52] *See* Yachnin, *supra* note 47; *see also* Press Release, Rep. Sherwood Boehlert, The "TR 10" Environmental Agenda for Congress (Apr. 21, 1999) ("We support permanent, off-budget funding of the LWCF, which provides funding to protect open spaces at the federal and state level. Republicans have taken the lead in pushing for this landmark change in federal lands policy, which would guarantee that as much as $900 million would go into land preservation each year, protecting our natural resources and providing recreational opportunities."). "TR" in "TR 10" was presumably referring to Teddy Roosevelt, a Republican President who ardently supported conservation.

[53] Yachnin, *supra* note 47.

[54] H.R. 701, 106th Cong. (1999).

[55] *See* Yachnin, *supra* note 47.

[56] *See Cosponsors: H.R. 701—106th Congress (1999–2000)*, Congress.gov, https://www.congress.gov/bill/106th-congress/house-bill/701/cosponsors [https://perma.cc/9LVW-VW44].

[57] H.R. 798, 106th Cong. (1999).

[58] *See Cosponsors: H.R. 798—106th Congress (1999–2000)*, Congress.gov, https://www.congress.gov/bill/106th-congress/house-bill/798/cosponsors?searchResultViewType=Expanded [https://perma.cc/8CLB-SNVH].

[59] *See* Jon Margolis, *Beware Alaskans Bearing Gifts*, High Country News (Mar. 1, 1999), http://www.hcn.org/issues/149/4824 [https://perma.cc/YXG7-U79X].

[60] *See, e.g.*, *id.*

[61] *Id.*

[62] *Id.*

[LWCF] at its authorized $900 million level."[63] Representative Miller became an official cosponsor of CARA on November 18, 1999, and the bill garnered passage in the House by a lopsided vote of 315 to 102.[64] But CARA's strong support in the House belied its chances of success, as the bill stalled in the Senate.

Senator Don Nickles (R-Okla.) opposed the legislation on the grounds that it would give the Clinton administration a "guaranteed funding stream for land acquisition" that would only serve to "encourage them to pursue their failed public lands agenda, which ignores the rights of private landowners and others living in states that are already largely owned by the federal government."[65] Senator Nickles was, at the time, the Senate majority whip. He leveraged his influence to slowly kill the bill, utilizing procedural tactics to prevent a Senate vote.[66] The Heritage Foundation published a report fleshing out some of the sharpest arguments against CARA, calling it "little more than a pork-filled land grab," warning that it "could seriously undermine the freedom of state and local communities to make local land use decisions," and lamenting that "[t]he spending of the trust fund monies would be made less accountable by taking it off-budget."[67] Ultimately, a less ambitious spending package for federal lands prevailed in Congress.[68] Although some members of Congress tried to revive the bill a year later, the terrorist attacks of September 11, 2001 shifted the nation's focus away from public land policy.[69]

Over the next fifteen years, LWCF-skeptical members of Congress rose to power. One particularly influential player was Representative Rob Bishop (R-Utah), who was named Chairman of the House Natural Resources Com-

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[63] *See* Press Release, Rep. Don Young, Chairman, Comm. on Res., "The Conservation & Reinvestment Act of 1999" Fact Sheet (Nov. 8, 1999), http://www.lobby.la.psu.edu/029_CARA/Congressional_Statements/House/H_Committee_Resources_110899.htm [https://perma.cc/EA8Y-7AB8]; *see also Hearing Before the S. Comm. on Env't & Pub. Works*, 106th Cong. 22 (2000) (statement of Rep. George Miller), https://www.govinfo.gov/content/pkg/CHRG-106shrg68424/pdf/CHRG-106shrg68424.pdf [https://perma.cc/KE5F-3QV2] ("When we started out on this journey, Chairman Young and Senator Murkowski and Senator Landrieu introduced a bill called the Conservation [and] Reinvestment Act. Senator Boxer and I introduced Resources 2000. Nearly everyone said that these bills were too big, too expensive, and too far reaching. When we said we would try to merge the bills and everyone said it was impossible, Don Young and George Miller together, we did it.").

[64] *Actions Overview: H.R. 701—106th Congress (1999–2000)*, CONGRESS.GOV, http://www.congress.gov/bill/106th-congress/house-bill/701/actions [https://perma.cc/EZ85-XCN7].

[65] Yachnin, *supra* note 47.

[66] *See id.*

[67] Gregg VanHelmond, *Why CARA Is Fiscally Irresponsible and a Threat to Local Land Use Decisions*, HERITAGE FOUND. (May 9, 2000), https://www.heritage.org/government-regulation/report/why-cara-fiscally-irresponsible-and-threat-local-land-use-decisions [https://perma.cc/69GL-ANBD].

[68] *See* John Krist, *Conservation Gains Federal Funding, but Larger Package Fails*, CALIF. PLAN. & DEV. REP. (Nov. 1, 2000), https://www.cp-dr.com/articles/node-1228 [https://perma.cc/F4VV-C6WL].

[69] *See* Yachnin, *supra* note 47.

mittee in 2014.[70] In 2015, the LWCF was up for reauthorization.[71] Representative Bishop, however, let the fund expire, citing "fundamental flaws" and a need for reform.[72] In an op-ed, Representative Bishop cited a disturbing statistic: federal land management agencies were "racking up as much as $19 billion in federal maintenance backlogs on existing lands."[73] After some political jockeying, Congress would punt on the LWCF question, including a temporary reauthorization of the LWCF for three years in an omnibus spending bill at the end of 2015.[74]

The maintenance backlog number, however, remained a front-burner issue. A Congressional Research Service report indicated that for the National Park Service alone, the estimated maintenance backlog as of FY2016 was $11.332 billion.[75] This was no new phenomenon; the report noted that the backlog had barely grown in real dollars over the previous decade.[76] Senator Tom Coburn (R-Okla.) issued a report in 2013 entitled "Parked! How Congress's Misplaced Priorities Are Trashing Our National Treasures."[77] Coburn cited the Park Service's high administrative costs, along with Congress's work to expand parks without addressing maintenance issues, as key contributors to the backlog.[78] With Congress and members of the public looking for a solution, the Trump administration rode into town in January 2017 with an uncertain public lands agenda.

Although President Trump had run on a strong, pro-energy platform,[79] he had also given hints that he might be open to a stronger federal role in public land management than some of the other 2016 Republican presidential hopefuls might have adopted. In January 2016, then-candidate Trump gave an interview to Anthony Licata of the trade publication *Field & Stream*

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[70] *See* Amy J. O'Donoghue, *Utah Republican Rep. Rob Bishop Confirms He's Leaving Congress, Undecided About Governor's Race*, Deseret News (July 29, 2019, 6:13 PM), https://www.deseret.com/utah/2019/7/29/20755576/utah-republican-rep-rob-bishop-confirms-he-s-leaving-congress-undecided-about-governor-s-race [https://perma.cc/C5C4-2TBZ].

[71] *See* Rob Bishop, *Why I Let the Land and Water Conservation Fund Expire*, Politico (Dec. 8, 2015, 11:52 AM), https://www.politico.com/agenda/story/2015/12/land-water-conservation-fund-000339/ [https://perma.cc/G4LF-A6WQ].

[72] *See id.*

[73] *Id.*

[74] John Sterling, *Land & Water Conservation Fund Reauthorized for Three Years!*, Conservation All. (Dec. 17, 2015), http://www.conservationalliance.com/land-water-conservation-fund-reauthorized-for-three-years/ [https://perma.cc/HGG3-9UV8].

[75] Laura B. Comay, Cong. Rsch. Serv., R44924, The National Park Service's Maintenance Backlog: Frequently Asked Questions 2 (2017), https://fas.org/sgp/crs/misc/R44924.pdf [https://perma.cc/VAS3-5AC7].

[76] *See id.* at 3 (noting the backlog rate in nominal and inflation-adjusted dollars).

[77] Laura Barron-Lopez, *Coburn Blasts Congress for 'Trashing' National Parks*, Hill (Oct. 29, 2013, 11:32 AM), https://thehill.com/policy/energy-environment/188559-coburn-blasts-congress-for-trashing-national-parks [https://perma.cc/8QLG-MENN].

[78] *Id.*

[79] *See, e.g.*, Justin Worland, *Donald Trump Promises to Cut Regulation on 'Phony' Environmental Issues*, Time (May 26, 2016, 5:01 PM), https://time.com/4349309/donald-trump-bismarck-energy-speech/ [https://perma.cc/D3VK-KNWB]. Then-candidate Trump's energy policy speech in Bismarck, North Dakota was perhaps the clearest explication of the energy and environmental policy on which the President campaigned.

Magazine.[80] The two talked about guns, hunting, conservation, and the privatization of federal lands—not exactly what one might imagine as top-of-mind issues for a Manhattan real estate mogul. During the interview, however, Trump made a noteworthy assertion. Licata asked the following: "Seventy percent of hunters in the West hunt on public lands managed by the federal government. Right now, there's a lot of discussion about the federal government transferring those lands to states and the divesting of that land. Is that something you would support as President?"[81]

Trump responded, in relevant part,

> I don't like the idea because I want to keep the lands great, and you don't know what the state is going to do. I mean, are they going to sell if they get into a little bit of trouble? And I don't think it's something that should be sold. We have to be great stewards of this land. This is magnificent land. And we have to be great stewards of this land. And the hunters do such a great job—I mean, the hunters and the fishermen and all of the different people that use that land.[82]

Upon taking office, President Trump appointed Ryan Zinke—a Congressman from Montana—to be his Secretary of the Interior. Secretary Zinke had been a supporter of the LWCF while in Congress[83] and had developed a strong record on public lands in a limited amount of time in the House of Representatives.[84] Faced with the problem of the maintenance backlog on public lands, then-Secretary Zinke proposed a significant hike to the fees at certain popular national parks around the country to address the issue.[85] But after significant backlash, Interior modified the plans to administer a more modest, across-the-board increase at over 100 parks.[86]

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[80] *See Q&A: Donald Trump on Guns, Hunting, and Conservation*, FIELD & STREAM (Jan. 22, 2016), https://www.fieldandstream.com/articles/hunting/2016/01/qa-donald-trump-on-guns-hunting-and-conservation/ [https://perma.cc/SR6U-9Q43].

[81] *Id.*

[82] *Id.*

[83] *See* Martin Kidston, *Tester, Daines Can't Convince Republicans to Reauthorize Conservation Fund*, MISSOULIAN (Sept. 30, 2015), https://missoulian.com/news/local/tester-daines-cant-convince-republicans-to-reauthorize-conservation-fund/article_e0bdceb1-35bc-5955-a950-801737102afa.html [https://perma.cc/Y9TG-MV67]. He reiterated this support during his confirmation process. *See* Lance Trebesch, *Montana Voices: All Eyes, and Hopes, on Zinke at Interior's Helm*, MISSOULA CURRENT (Jan. 21, 2017), https://missoulacurrent.com/opinion/2017/01/montana-ryan-zinke-interior-secretary-2/?print=print [https://perma.cc/A9JY-JZZW].

[84] *See, e.g.*, Tom Lutey, *Sources: Zinke Is Trump's Pick for Interior Secretary*, BILLINGS GAZETTE (Dec. 13, 2016), https://billingsgazette.com/news/sources-zinke-is-trumps-pick-for-interior-secretary/article_8a1f9994-2da0-53f6-bf04-bc157b0d0de4.html [https://perma.cc/5P4N-NHL5].

[85] *See* Rob Hotakainen, *Plans to Hike Fees Stir Outrage*, E&E NEWS (Oct. 26, 2017), https://www.eenews.net/stories/1060064791/ [https://perma.cc/8PGJ-3MNL].

[86] *See* Tristan Justice, *Ryan Zinke to Raise Park Fees $5 After Backing off Huge Hikes*, WASH. EXAM'R (Apr. 12, 2018), https://www.washingtonexaminer.com/policy/energy/ryan-zinke-to-raise-park-fees-5-after-backing-off-huge-hikes [https://perma.cc/HNG7-ZLUD].

In 2018, with the support of then-Secretary Zinke, a handful of senators took a different approach.[87] On June 28, 2018, Senator Rob Portman (R-Ohio) introduced the Restore Our Parks Act.[88] A legislative summary notes that the bill would have "establishe[d] the National Park Service Legacy Restoration Fund" and "require[d] 50% of all energy development revenues for [Fiscal Years 2019–23] to be deposited" in the Fund.[89] Senators Angus King (I-Me.), Mark Warner (D-Va.), and Lamar Alexander, joined Senator Portman as original cosponsors.[90] Eventually, the bill garnered thirty-six cosponsors.[91] But, despite a coordinated effort between various members of Congress and Secretary Zinke to promote the bill,[92] it died at the end of the 115th Congress and, on September 30, 2018, the LWCF expired yet again.[93]

It was not clear at the outset how the 116th Congress would shake out. After two years of Republican control of the White House, Senate, and House of Representatives, the Democrats regained control of the House in the 2018 midterm elections.[94] As the new Congress began its work, however, a prominent former member of the House of Representatives passed away. John Dingell, a Democrat of Michigan, represented Michigan in the House for almost sixty years from 1955 until 2014.[95] He succumbed to prostate

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[87] *See* Miranda Green, *Sens Introduce Bipartisan Bill Matching Zinke Proposed Maintenance Backlog Fix*, HILL (June 29, 2018, 4:42 PM), https://thehill.com/policy/energy-environment/394883-sens-introduce-bill-matching-zinkes-proposal-to-fix-park [https://perma.cc/U8S6-LUZG].

[88] S. 3172, 115th Cong. (2018).

[89] *Summary: S. 3172—115th Congress (2017–2018)*, CONGRESS.GOV, https://www.congress.gov/bill/115th-congress/senate-bill/3172 [https://perma.cc/8DDJ-ZPRK].

[90] *See Cosponsors: S. 3172—115th Congress (2017–2018)*, CONGRESS.GOV, https://www.congress.gov/bill/115th-congress/senate-bill/3172/cosponsors [https://perma.cc/H2NG-XDNR].

[91] *See id.*

[92] *See, e.g.*, *Interior Secretary Zinke Releases Video Urging Action on Maintenance Backlog*, OUTDOOR RECREATION ROUNDTABLE, https://recreationroundtable.org/interior-secretary-zinke-releases-video-urging-action-on-maintenance-backlog/ [https://perma.cc/ZK2L-EWY2] (citing NationalParkService, *National Parks: A Love Story*, YOUTUBE (July 31, 2018), https://www.youtube.com/watch?v=utwCD0ulaH8 [https://perma.cc/H9BB-F6YT]); Blake Nicholson, *Interior Secretary Calls for Rebuilding National Parks that Have Fallen into Disrepair*, L.A. TIMES (May 22, 2018), https://www.latimes.com/nation/la-na-national-parks-zinke-20180522-story.html [https://perma.cc/NE4K-QPJH]; Ryan Zinke & Lamar Alexander, *Zinke and Alexander: How to Protect America's 'Best Idea'*, CNN (May 2, 2018), https://www.cnn.com/2018/05/02/opinions/national-parks-need-support-alexander-zinke-opinion/index.html [https://perma.cc/AL9F-P475].

[93] *See* Julie Kailus, *Expired: Congress Fails to Reauthorize Land and Water Conservation Fund*, GEARJUNKIE (Oct. 1, 2018), https://gearjunkie.com/land-and-water-conservation-fund-act-expires [https://perma.cc/N46W-BR4S].

[94] *See* Jonathan Martin & Alexander Burns, *Democrats Capture Control of House; G.O.P. Holds Senate*, N.Y. TIMES (Nov. 6, 2018), https://www.nytimes.com/2018/11/06/us/politics/midterm-elections-results.html [https://perma.cc/T52H-96ED].

[95] *See* John Bresnahan & Jake Sherman, *John Dingell, the Longest-Serving Member of Congress, Dies at 92*, POLITICO (Feb. 7, 2019), https://www.politico.com/story/2019/02/07/john-dingell-the-longest-serving-member-of-congress-dies-at-93-1154038 [https://perma.cc/9QJT-YC37].

cancer at the age of ninety-two on February 6, 2019.[96] Representative Dingell championed the cause of conservationism while in Congress; in fact, he and Congressman Young had worked side-by-side in the late 1990s and early 2000s to push CARA.[97]

As the new Congress got to work, legislators of both parties collaborated on bipartisan negotiations to reauthorize the LWCF and enact various other public lands bills. Their discussions resulted in a massive set of bills—over 100—that included permanent reauthorization of the LWCF.[98] A key detail was the way in which the Act delineated future allocations of funds: *not less* than forty percent for federal purposes and *not less* than forty percent for financial assistance to states (leaving twenty percent to go in either direction).[99] The package easily passed both the House and Senate,[100] ending Congress's four-year game of chicken with the LWCF's authorization. In honor of the late Representative Dingell, Congress titled the bill "The John D. Dingell Jr. Conservation, Management and Recreation Act."[101] Still, as important as the Dingell Act was, reauthorization was not the same thing as full funding. While the LWCF would enjoy statutory authorization in perpetuity, Congress would still set its appropriation each year.

B. From Introduction to Enactment

On March 9, 2020, Senator Cory Gardner (R-Colo.) introduced the Great American Outdoors Act in the Senate as S.3422.[102] Senator Gardner, a Republican, was up for re-election in the 2020 election cycle.[103] That day, fifty-four of Senator Gardner's colleagues in the Senate joined the bill as cosponsors, including twelve Republicans, forty Democrats, and two Independents who caucus with the Senate Democrats.[104] In a press release announcing the bill, Senator Gardner's office listed Senators Joe Manchin (D-

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[96] *See id.*

[97] *See Young, Dingell Put CARA Bill Back on Radar Screen*, E&E NEWS: E&E DAILY (Jan. 25, 2001), https://www.eenews.net/eedaily/stories/154 [https://perma.cc/ME6N-P9YB].

[98] *See* Ryan Stanton, *Trump Signs Major Land Conservation Act in Honor of John Dingell*, MLIVE (Mar. 13, 2019), https://www.mlive.com/news/ann-arbor/2019/03/trump-signs-major-land-conservation-act-in-honor-of-john-dingell.html [https://perma.cc/8WGN-823J].

[99] *See* John D. Dingell, Jr. Conservation, Management, and Recreation Act, Pub. L. No. 116-9, sec. 3001(b), § 200304, 133 Stat. 580, 755 (2019).

[100] *See id.* app., 133 Stat. at 839 (noting legislative history of House and Senate passage dates).

[101] *See* Kendell Lewis, *Land Conservation Bill Named in Honor of John Dingell Becomes Law*, MICH. DAILY (Mar. 18, 2019), https://www.michigandaily.com/section/government/land-conservation-bill-named-honor-john-dingell-becomes-law [https://perma.cc/S69G-KE7A].

[102] *See Summary: S. 3422—116th Congress (2019–2020)*, CONGRESS.GOV, https://www.congress.gov/bill/116th-congress/senate-bill/3422 [https://perma.cc/5QQ2-Q4AA].

[103] Alicia Parlapiano, *Colorado Election Results*, N.Y. TIMES, https://www.nytimes.com/interactive/2020/11/03/us/elections/results-colorado.html [https://perma.cc/XJN3-KDKY].

[104] *See Cosponsors: S. 3422—116th Congress (2019–2020)*, CONGRESS.GOV, https://www.congress.gov/bill/116th-congress/senate-bill/3422/cosponsors [https://perma.cc/JN6X-PCBR].

W. Va.), Steve Daines (R-Mont.), Rob Portman (R-Ohio), Mark Warner, Angus King, Lamar Alexander, and Richard Burr (R-N.C.) as fellow introducers of the bill.[105] In a quote, Senator Manchin called himself "the lead Democrat introducing" the Act.[106]

Unlike the 1980s bill, political calculations actually *helped* the bill become law this time around. Senate Majority Leader Mitch McConnell (R-Ky.) saw this piece of legislation as a way to bolster Senators Gardner's and Daines's reelection campaigns.[107] Senator McConnell brought the two in for a meeting with the President concerning the bill. In the room that day was Russ Vought, the Director of the White House Office of Management & Budget who was known as a "budget hawk."[108] Senator Gardner stated later that he was "kind of terrified" when he heard that Vought and other LWCF critics would be part of the meeting,[109] but as CNN's Manu Raju reported, President Trump quickly sided with the senators and remarked, "Sorry, Russ."[110] This was perhaps something of a reversal for the President; his administration had advocated for vastly cutting LWCF funding in prior budget proposals.[111] But on March 3, 2020, the President tweeted, "I am calling on Congress to send me a Bill that fully and permanently funds the LWCF and restores our National Parks. When I sign it into law, it will be HISTORIC for our beautiful public lands. ALL thanks to @SenCoryGardner and @SteveDaines, two GREAT Conservative Leaders!"[112]

In addition, the possibility of passing the Great American Outdoors Act became a noteworthy potential legacy item for Senator Alexander, a close

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[105] *See* Press Release, Sen. Cory Gardner, Gardner, Manchin, Bipartisan Colleagues Introduce the Great American Outdoors Act; Landmark Legislation will Permanently Fund the LWCF, Address $12 Billion Park Maintenance Backlog (Mar. 9, 2020), https://www.legistorm.com/stormfeed/view_rss/1436370/member/2735.html [https://perma.cc/X9Z4-MQ5M].

[106] *Id.*

[107] *See* Manu Raju, *How McConnell Is Maneuvering to Keep the Senate in GOP Hands—and Navigating Trump*, CNN (Sept. 10, 2020, 8:34 AM), https://www.cnn.com/2020/09/10/politics/mitch-mcconnell-senate-majority/index.html [https://perma.cc/23UC-UB7L].

[108] Bobby Allyn, *Trump Picks Budget Hawk Russ Vought as OMB Director as Coronavirus Crashes Economy*, NPR (Mar. 18, 2020, 7:47 PM), https://www.npr.org/2020/03/18/818016680/trump-picks-budget-hawk-russ-vought-as-omb-director-as-coronavirus-crashes-econo [https://perma.cc/AP5E-6WP8].

[109] *See* Emma Dumain, *How Cory Gardner Sold the GOP on a Historic Lands Bill*, E&E News (June 18, 2020), https://www.eenews.net/stories/1063406903. [https://perma.cc/W8ZT-AK42].

[110] *See* Raju, *supra* note 107. It is notable, however, that in Senate floor remarks following the signing of the Great American Outdoors Act, Senator Portman thanked Vought "for his help." *See* Press Release, Sen. Rob Portman, On Senate Floor, Portman Marks Historic Milestone for America's National Parks (Aug. 4, 2020), https://www.portman.senate.gov/newsroom/press-releases/senate-floor-portman-marks-historic-milestone-americas-national-parks [https://perma.cc/ZM9F-UFH6].

[111] Rebecca Beitsch, *Trump Calls for Full Funding for Conservation Program After Slashing It in His Budget*, Hill (Mar. 3, 2020), https://thehill.com/policy/energy-environment/485780-trump-calls-for-full-funding-for-conservation-program-after [https://perma.cc/4UPG-LL74].

[112] *Id.*

ally of Senator McConnell[113] who was set to retire from the Senate at the end of the 116th Congress.[114] During the 2019–2020 legislative session, Senator Alexander had sought to leave his mark on the chamber in some way. As a former Secretary of Education and outgoing Chairman of the Senate Committee on Health, Education, Labor, and Pensions,[115] Senator Alexander's major attempt at a last hurrah came in the form of an attempted reauthorization of the Higher Education Act, a statute originally passed in 1965 during the presidency of Lyndon Baines Johnson that touches nearly every aspect of higher education in the United States (including the student loan program).[116] But during the pandemic, these efforts stalled.[117] Eventually, Senator Alexander pivoted his focus and played a part in "shepherd[ing]" the Great American Outdoors Act to the brink of enactment.[118] In the end, one news outlet would describe the Act as Senator Alexander's "crowning achievement"—perhaps a fitting end to his distinguished eighteen-year career in the upper chamber.[119]

As passage became more likely, different lawmakers raised objections. This Note will briefly discuss two of them. First, legislators from states on or near the Gulf Coast took issue with the allocation of funding. Senator Bill Cassidy (R-La.) argued that under the bill, "these dollars are not spent relative to where people live. We're spending dollars on places where people vacation but not where they live."[120] To put a finer point on it, Senator Cassidy's objection seemed to be grounded in the fact that although the revenues would be derived in large part from energy development near states like Louisiana, the revenue would be dispersed across the whole country (and large federal landholdings in western states in particular). Senator Cassidy

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[113] *See* Tyler Whetstone, *Sen. Lamar Alexander a 'Senator that All Senators Should Basically Look to'*, Knox News (Jan. 3, 2021, 7:00 AM), https://www.knoxnews.com/story/news/politics/2021/01/03/sen-lamar-alexander-lifetime-making-deals-ends-national-parks-law/6338814002/ [https://perma.cc/A9GX-D3H9].

[114] *See* Tyler Whetstone, *In Farewell Address, Lamar Alexander Calls for Senate to Come Together, Work Better*, Knox News (Dec. 2, 2020, 11:14 AM), https://www.knoxnews.com/story/news/politics/2020/12/02/tennessee-lamar-alexander-retiring-bids-farewell-calls-unity-senate/6470901002/ [https://perma.cc/9WGG-CFVY].

[115] *See 2019 Education Policy Outlook*, Dentons (Jan. 14, 2019), https://www.dentons.com/en/insights/alerts/2019/january/14/2019-education-policy-outlook [https://perma.cc/YJ48-XBJZ].

[116] *See* Danielle Douglas-Gabriel, *Higher Education Reform Stalled in the Senate, While House GOP Charges Ahead*, Wash. Post (June 1, 2018, 7:00 AM), https://www.washingtonpost.com/news/grade-point/wp/2018/06/01/higher-ed-reform-stalled-in-the-senate-while-house-gop-charges-ahead/ [https://perma.cc/3AP3-JPBF].

[117] *See* Kery Murakami, *The Higher Education Act and the Pandemic*, Inside Higher Ed (Apr. 15, 2020), https://www.insidehighered.com/news/2020/04/15/senate-committee-was-close-deal-higher-ed-then-came-pandemic [https://perma.cc/6CR2-M2TY].

[118] *See* Whetstone, *supra* note 113.

[119] *See* Whetstone, *supra* note 114.

[120] Press Release, Sen. Bill Cassidy, Cassidy Urges Amending Great American Outdoors Act to Provide Equity for Coastal States (June 9, 2020), https://www.cassidy.senate.gov/newsroom/press-releases/cassidy-urges-amending-great-american-outdoors-act-to-provide-equity-for-coastal-states- [https://perma.cc/DJ5T-FF5E].

would have preferred the money be invested in coastal states like his. Given that in 2019, about ninety percent of the total energy revenue that went to the U.S. Treasury came from the Gulf of Mexico, Senator Cassidy's point that states like his were "underwriting" the Act was not unfounded.[121]

Second, conservative and libertarian members of Congress attacked the mandatory spending provisions of the bill as fiscally irresponsible. Senator Mike Enzi (R-Wyo.) took issue with the fact that the legislation would "add over $17 billion to our deficit over the next 10 years."[122] On a similar note, Senator Mike Lee (R-Utah) focused his criticism on how the bill would compel further land acquisition by the federal government.[123] Senator Lee took issue with the bill "putting Federal land acquisition on an equal footing with programs like Social Security and Medicare by making it mandatory."[124] Indeed, the Dingell Act mandates that no less than forty percent of the LWCF funds—meaning *at least* $360 million every year—be spent for federal purposes (almost certainly land acquisition).[125] Senator Lee made the point that federal land acquisition has not been the same in all of the states, either, remarking: "In every State east of Colorado, the Federal Government owns less than 15 percent. In every State Colorado and west, the Federal Government owns more than 15 percent. The average is more like 50 percent in the Western United States, and in many of those States, including [Utah], it is more like two-thirds of the land."[126]

Perhaps anticipating the impact that these objections (and the amendments based on them) might have on the bill's prospect, Senator McConnell "used a procedural tactic to block amendments" and brought the bill to a vote.[127] Senator Lee complained at the time that the "Act was written behind closed doors and has now been hermetically sealed, walled off from amendments, by the people's elected representatives."[128] Nevertheless, on June 17, 2020, the bill passed the Senate on a bipartisan seventy-three to twenty-five vote.[129] For his part, Senator McConnell quipped, "Not only was it the right thing to do from a good government point of view, but sure—it ought to help Cory and Steve, they did a lot of work on it."[130] On July 22, 2020, the

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[121] *See id.*

[122] 166 Cong. Rec. S2970 (daily ed. June 15, 2020) (statement of Sen. Mike Enzi).

[123] *See* 166 Cong. Rec. S2919–20 (daily ed. June 11, 2020) (statement of Sen. Mike Lee).

[124] *Id.* at S2919.

[125] *See* Hannah Downey, *The Great American Outdoors Act, Explained*, PERC (Aug. 4, 2020), https://www.perc.org/2020/08/04/the-great-american-outdoors-act-explained/ [https://perma.cc/U6DS-R73P].

[126] 166 Cong. Rec. S2917 (daily ed. June 11, 2020) (statement of Sen. Mike Lee).

[127] Carl Hulse, *Senate Passes Major Public Lands Bill*, N.Y. Times (June 17, 2020), https://www.nytimes.com/2020/06/17/us/senate-national-parks-funding-bill.html [https://perma.cc/T5ZN-D5J4].

[128] 166 Cong. Rec. S2911 (daily ed. June 11, 2020) (statement of Sen. Mike Lee).

[129] *See Actions Overview: H.R. 1957—116th Congress (2019–2020)*, Congress.gov, https://www.congress.gov/bill/116th-congress/house-bill/1957/actions [https://perma.cc/C58V-44JY] [hereinafter *H.R. 1957 Overview*].

[130] Raju, *supra* note 107.

House of Representatives followed the Senate's lead by passing the legislation 310-107.[131] President Trump then signed the bill into law on August 4, 2020, declaring:

> From an environmental standpoint and from just the beauty of our country standpoint, there hasn't been anything like this since Teddy Roosevelt, I suspect. At some point, they'll have to start thinking about the Republican Party and all of the incredible things we've done on conservation and many other fronts.[132]

It is not clear where those in Senator Lee's camp will go from here. One possible approach will be advocacy for giving states and local governments the power to block certain LWCF programs. Secretary of the Interior David Bernhardt, with whom President Trump replaced Secretary Zinke, issued a Secretarial Order in November 2020 to implement the Great American Outdoors Act.[133] In the order, Secretary Bernhardt gave states and local governments "veto power over how communities spend and match grants through the LWCF, which funds access to recreation in states and federal land acquisitions."[134] This provision of the directive "echoed" an amendment that Senator Lee had proposed to the Great American Outdoors Act,[135] but Senator Lee's office maintained that Senator Lee "was not consulted" during the drafting of the order.[136] Secretary Bernhardt's Order laid down the first marker in the post-Act era supportive of the view that states and local governments should have a large say in LWCF spending.

Reflecting on Senator McConnell's political calculations, Senator Gardner ended up losing his seat to challenger John Hickenlooper, the former governor of Colorado. Senator Daines, however, held on to his spot, prevailing over then-Montana Governor Steve Bullock. Senator Gardner campaigned on his success in getting the bill passed, even running an ad entitled "1964" (referring to the year in which the LWCF was established) in which

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[131] *See H.R. 1957 Overview*, *supra* note 129.

[132] Annie Karni, *Trump Signs Landmark Land Conservation Bill*, N.Y. Times (Aug. 4, 2020), https://www.nytimes.com/2020/08/04/us/politics/trump-land-conservation-bill.html [https://perma.cc/3QP9-N7EV].

[133] *See* U.S. Dep't of the Interior, Order No. 3388, Land and Water Conservation Fund Implementation by the U.S. Department of the Interior (2020).

[134] *Id.*; *see also* Emma Dumain & Jennifer Yachnin, *Bernhardt Order Gives States Veto Authority over LWCF*, E&E News (Nov. 13, 2020), https://www.eenews.net/stories/1063718467 [https://perma.cc/4AFL-66J9]. Secretary Bernhardt's Order reflected his longstanding support for federalism. *See, e.g.*, David Bernhardt, *Opinion: At Interior, We're Ready to Bring the Endangered Species Act up to Date*, Wash. Post (Aug. 9, 2018), https://www.washingtonpost.com/opinions/at-interior-were-ready-to-bring-the-endangered-species-act-up-to-date/2018/08/09/2775cd8e-9a96-11e8-b55e-5002300ef004_story.html [https://perma.cc/K2VF-WY6J].

[135] *See* Dumain & Yachnin, *supra* note 134.

[136] *See* Emma Dumain & Jennifer Yachnin, *Lawmakers, Advocates Blast Bernhardt's LWCF Order*, E&E News (Nov. 16, 2020), https://www.eenews.net/stories/1063718493 [https://perma.cc/BQ7B-AS2W].

he dubbed the Act "Gardner's Law."[137] Former Governor Hickenlooper triumphed over Senator Gardner by a final margin of 53.5% to 44.2%, but the Senator did outrun President Trump in Colorado by about 65,000 votes, a difference of just over two percentage points.[138] Meanwhile, Senator Daines also leaned into the Act's passage on his re-election campaign.[139] Even Governor Bullock begrudgingly acknowledged his opponent's work, noting in a statement that he applauded Senator Daines's "efforts in helping get this across the finish line" before pivoting to say that "Montanans deserve leadership that stands up for public lands and the best interests of the people of our state every day—not just in election years."[140] In contrast to Senator Gardner, Senator Daines won his race handily, beating back the challenge from Governor Bullock by a 55% to 45% margin. Notably, however, Senator Daines ran about 10,000 votes behind President Trump in Montana, also a difference of about two percentage points given Montana's smaller population.[141]

III. Reviewing the Final Bill

As the legislative history makes clear, the establishment of the National Parks and Public Land Legacy Restoration Fund and the permanent reauthorization of the LWCF represent important developments for American public lands. This part explains both in turn by going through the bill section by section. The bill effectuates its policies by amending United States Code, Title 54 (the National Park Service and Related Programs).

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[137] *See* Marshall Zelinger, *Truth Test: Hickenlooper on Healthcare, Gardner on Great Outdoors*, 9News (July 30, 2020, 11:00 PM), https://www.9news.com/article/news/local/next/truth-test-hickenlooper-on-healthcare-gardner-on-great-outdoors/73-ef4c09fd-f9ab-4db6-9096-9cfb0bd6ee07 [https://perma.cc/F5LQ-LT8V]; *see also* Caitlyn Kim, *Cory Gardner's Conservation Credentials Stand on His Great Outdoors Bill. Is That Enough?*, CPR News (Oct. 16, 2020), https://www.cpr.org/2020/10/16/2020-senate-race-backstory-cory-gardner-conservation-record/ [https://perma.cc/G4TV-5X8W].

[138] *See* Parlapiano, *supra* note 103.

[139] *See Montana Conservation Groups Celebrate Passage of Great American Outdoors Act*, Mont. Pub. Radio (Aug. 11, 2020), https://www.mtpr.org/post/montana-conservation-groups-celebrate-passage-great-american-outdoors-act [https://perma.cc/V8RB-RRN2]; *see also* Elliott D. Woods, *Want to Win in Montana? It's the Environment, Stupid.*, Outside Online (Oct. 28, 2020), https://www.outsideonline.com/2418302/Daines-Bullock-Great-American-Outdoors-Act [https://perma.cc/Z5NC-72HA].

[140] Press Release, Steve Bullock for U.S. Senate, Governor Steve Bullock's Statement on the Passage of the Great American Outdoors Act in the Senate (June 17, 2020), https://stevebullock.com/2020/06/17/governor-steve-bullocks-statement-on-the-passage-of-the-great-american-outdoors-act-in-the-senate/ [https://perma.cc/X2ZT-QDLS].

[141] *See Montana Election Results*, N.Y. Times (Jan. 15, 2021), https://www.nytimes.com/interactive/2020/11/03/us/elections/results-montana.html [https://perma.cc/PUT4-KJ5N].

A. Titles and Definitions

Section 1 merely titles the Act.[142] By contrast, Section 2 creates the National Parks and Public Land Legacy Restoration Fund, adding a new chapter after Subtitle II, Chapter 2003 of Title 54.[143] To start, it lays down some key definitions, setting out what the terms "asset," "covered agency," "Fund," and "project" mean in the new chapter.[144] In order of significance: "Fund" is a clerical definition, providing that throughout the chapter, the word refers to the restoration fund.[145] "Covered agency" denotes which entities will receive allocations from the Fund for projects;[146] they are: the National Park Service, the U.S. Fish and Wildlife Service, the U.S. Forest Service,[147] the Bureau of Land Management, and the Bureau of Indian Education. "Asset" is used only three times throughout the bill outside of its own definition, and the inclusion of a description for the word provides context for its use in the last definition: "Project." The law defines an asset as "real property [with] a specific service or function; and . . . managed as a distinct, identifiable entity by the applicable covered agency."[148] Finally, a "project" is "any activity designed to *reduce or eliminate deferred maintenance of an asset*."[149] The law includes a caveat that a project may be the resolution of "directly related infrastructure deficiencies of the asset that would not by itself be classified as deferred maintenance."[150]

B. The Fund

The next part of the bill establishes the Fund. For each fiscal year from 2021 to 2025, fifty percent of *all* federal energy development revenues—"from oil, gas, coal, or alternative or renewable energy development on Federal land and water"—will be deposited into the Fund, unless that number exceeds $1.9 billion.[151] If the Secretary of the Interior determines, in consultation with the Secretary of Agriculture, that some portion of the deposit is not "required to meet the current needs of the Fund," she may request that

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[142] Great American Outdoors Act, Pub. L. No. 116-152, § 1, 134 Stat. 682, 682 (2020).
[143] *Id.* § 2(a), 134 Stat. at 682 (codified at 54 U.S.C. § 200401).
[144] *Id.* § 2(a), 134 Stat. at 682–83 (codified at 54 U.S.C. § 200401).
[145] *Id.* § 2(a), 134 Stat. at 682 (codified at 54 U.S.C. § 200401(3)).
[146] *Id.* § 2(a), 134 Stat. at 682 (codified at 54 U.S.C. §200401(2)).
[147] The Forest Service is the only covered agency under the U.S. Department of Agriculture, as opposed to the U.S. Department of the Interior. Some have called for the transfer of the Forest Service to Interior. For a sober consideration of the pros and cons of this idea, see generally U.S. GOV'T ACCOUNTABILITY OFF., GAO-09-223, FEDERAL LAND MANAGEMENT, OBSERVATIONS ON A POSSIBLE MOVE OF THE FOREST SERVICE INTO THE DEPARTMENT OF THE INTERIOR (2009).
[148] Great American Outdoors Act § 2(a), 134 Stat. at 682 (codified at 54 U.S.C. § 200401(1)).
[149] *Id.* § 2(a), 134 Stat. at 682–83 (2020) (emphasis added) (codified at 54 U.S.C. § 200401(4)).
[150] *Id.*
[151] *Id.* § 2(a), 134 Stat. at 683 (codified at 54 U.S.C. § 200402(b)(1)–(2)).

the Secretary of the Treasury invest the money in a public debt security; investment income would then flow to the Fund.[152] This subsection of the bill could become relevant if, at any point, interest rates significantly outpace inflation and a presidential administration determines that it can augment the Fund over the long term through public debt security investment.[153]

Subsection (e) of this part of the bill gets into the most important aspect of the Fund: how the money is to be distributed. The bulk of the money—seventy percent—is allocated to the National Park Service.[154] Another fifteen percent will go to the Forest Service.[155] And the remaining fifteen percent is split evenly three ways—five percent each—among the Fish and Wildlife Service, the Bureau of Land Management, and the Bureau of Indian Education.[156] The bill provides that the money "shall be used for priority deferred maintenance projects" under each of the covered agencies.[157] For the National Park Service, that means projects in the National Park System, just as the bill refers to the National Forest System and the National Wildlife Refuge System, respectively, for the Forest Service and the Fish and Wildlife Service.[158] The Bureau of Land Management must spend the money on public lands it administers, while the Bureau of Indian Education's allotment is for the Bureau's schools.[159]

The Bureau of Indian Education's inclusion in the bill may strike some as out of place, given the Fund's focus on public lands. But Secretary Zinke argued strongly for using available monies for maintenance in Bureau schools. In a March 2018 op-ed, Secretary Zinke had the following to say about the state of affairs in the schools, which are part of Interior's portfolio:

> [A]s secretary of the Interior, I am responsible for the education of 47,000 American Indian students. Native American kids deserve a world-class education, and the Department needs to live up to its treaty obligations. Many schools are structurally unsound, lack basic features like functional doors and windows, or are infested with mold. This is heartbreaking and unacceptable, as is the lack of modern infrastructure investment at schools located in isolated areas. As part of our push to rebuild our American infrastructure, we will fight to rebuild our BIE schools, which suffer from a $634 million maintenance backlog for education facilities.[160]

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[152] *Id.* § 2(a), 134 Stat. at 683–84 (codified at 54 U.S.C. § 200402(d)).
[153] *See id.*
[154] *Id.* § 2(a), 134 Stat. at 684 (codified at 54 U.S.C. § 200402(e)(1)(A)).
[155] *Id.* § 2(a), 134 Stat. at 684 (codified at 54 U.S.C. § 200402(e)(1)(B)).
[156] *Id.* § 2(a), 134 Stat. at 684 (codified at 54 U.S.C. § 200402(e)(1)(C)–(E)).
[157] *Id.* § 2(a), 134 Stat. at 684 (codified at 54 U.S.C. § 200402(e)(1)).
[158] *Id.*
[159] *Id.*
[160] Ryan Zinke, *Making a Historic Investment in Public Lands Infrastructure*, WASH. TIMES (Mar. 21, 2018), https://www.washingtontimes.com/news/2018/mar/21/making-a-historic-investment-in-public-lands-infra/ [https://perma.cc/HQE3-KJD6]. Secretary Zinke's op-

Interior should be able to make some progress on the condition in Bureau schools with the allotments from the Act.

The bill places some key limitations and prohibitions on usage of the funds. Congress demonstrated a distinct preference for use of the funds on non-transportation projects, mandating that no less than sixty-five percent of each covered agency's funds be allocated for such projects over the life of the Fund.[161] Congress included "paved and unpaved roads, bridges, tunnels, and paved parking areas" under its definition of transportation projects.[162] As for prohibitions, none of the covered agencies may use allocations from the Fund to (1) acquire land, (2) supplant discretionary funding for annually recurring operations and maintenance on facilities, or (3) grant bonuses to federal employees carrying out the monetary distributions.[163] That's not all; Congress gave the Secretary of the Interior and the Secretary of Agriculture ninety days from the date of the bill's enactment to submit its list of fiscal year 2021 projects to the Senate Committees on Energy & Natural Resources and Appropriations, as well as the House Committees on Natural Resources and Appropriations.[164] Now, the responsibility has shifted to the President to submit a list of projects to Congress each year when he sends along the annual budget.[165]

In addition to a subsection about how the Fund is subject to alternate appropriations legislation and another subsection requiring the incorporation of measures to improve accessibility and accommodate individuals with disabilities, the end of this part of the bill includes a subsection that merits special attention. Congress has authorized the acceptance of public donations "that advance efforts . . . to reduce the deferred maintenance backlog" and "encourage relevant public-private partnerships."[166] This seems to open the door for private entities to work with the Departments of the Interior and Agriculture to develop public-private partnerships through donations. The Trump administration made public-private partnerships a key focus of its public land revitalization efforts.[167] The covered agencies would be wise to explore the myriad ways in which this provision may optimize the reduction of deferred maintenance. Finally, Congress has directed the Comptroller

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ed demonstrates that the Trump administration also saw the push for bills like the Restore Our Parks Act as part of President Trump's interest in infrastructure.

[161] Great American Outdoors Act § 2(a), 134 Stat. at 684 (codified at 54 U.S.C. § 200402(e)(2)(A)).

[162] *Id.* § 2(a), 134 Stat. at 684 (codified at 54 U.S.C. § 200402(e)(2)(B)).

[163] *Id.* § 2(a), 134 Stat. at 684 (codified at 54 U.S.C. § 200402(f)).

[164] *Id.* § 2(a), 134 Stat. at 684 (codified at 54 U.S.C. § 200402(g)).

[165] *Id.* § 2(a), 134 Stat. at 685 (codified at 54 U.S.C. § 200402(g)).

[166] *Id.* § 2(a), 134 Stat. at 685 (codified at 54 U.S.C. § 200402(j)(1)).

[167] *See, e.g.*, Press Release, U.S. Dep't of the Interior, Secretary Zinke Announces Made in America Recreation Advisory Committee (July 18, 2017), https://www.doi.gov/pressreleases/secretary-zinke-announces-made-america-recreation-advisory-committee [https://perma.cc/FKP5-TBKT]; Press Release, U.S. Dep't of the Interior, Zinke Announces Public-Private Partnership Bringing $2.7 Million to Habitat Conservation of Big Game Migration Corridors and Winter Range (Oct. 23, 2018), https://www.doi.gov/pressreleases/zinke-announces-public-private-partnership-bringing-27-million-habitat-conservation [https://perma.cc/Z7RE-Y8BY].

General of the United States to conduct a study on the Fund's implementation in five years;[168] the study promises to be a worthwhile report on the legislation's effectiveness.

C. The Land and Water Conservation Fund Gets Its Day

The bill's third section is relatively straightforward—any amounts deposited in the Fund from Section 2 are made available for expenditure in "fiscal year 2021 and each fiscal year thereafter, without further appropriation or fiscal year limitation, to carry out the purposes of the Fund."[169] The section itself is titled "Permanent Full Funding of the Land and Water Conservation Fund."[170] Once again, the President will need to submit a detailed report of allocations, cataloging the "full amount made available," to Congress each year.[171] In addition to the permanent LWCF reauthorization, Congress inserted a provision into this section that requires expenditures to "be consistent with the requirements for recreational public access for hunting, fishing, recreational shooting, or other outdoor recreational purposes."[172]

One conforming amendment is worth some discussion. Congress removed what had been 54 U.S.C. § 200306(a)(2)(B)(iii), which read as follows: "Except for areas specifically authorized by Act of Congress, not more than 15 percent of the acreage added to the National Forest System pursuant to this section shall be west of the 100th meridian."[173] This provision had been the subject of a minor brouhaha when a December 2019 report from the Government Accountability Office concluded that, in fact, eighty percent of Forest Service land acquisition occurred *west* of the 100th meridian, in gross contradiction to the statutory command.[174] Congressman Bishop, the Ranking Member on the House Natural Resources Committee by 2020, tried to argue that this amendment would "steer" federal money away from eastern states and representatives from these states should oppose the legislation on these grounds.[175] But the Ranking Member's argument proved unavailing.

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[168] Great American Outdoors Act § 2(c), 134 Stat. at 685–86.

[169] *Id.* § 3(a), 134 Stat. at 686 (codified at 54 U.S.C. § 200303(a)).

[170] *Id.* § 3, 134 Stat. at 686.

[171] *Id.* § 3(a), 134 Stat. at 686 (codified at 54 U.S.C. § 200303(c)(1)).

[172] *Id.* § 3(a), 134 Stat. at 687 (codified at 54 U.S.C. § 200303(c)(3)).

[173] 54 U.S.C. § 200306(a)(2)(B)(iii), *repealed by* Great American Outdoors Act § 3(b)(2), 134 Stat. at 687.

[174] *See* Anthony Adragna, *Bishop Warns Conservation Bill Could Rob Eastern States of Forest Money*, Politico (July 2, 2020, 10:11 AM), https://www.politico.com/news/2020/07/02/rob-bishop-great-american-outdoors-act-347990 [https://perma.cc/DF8C-9F6B]; U.S. Gov't Accountability Off., GAO-20-175R, Office, Land and Water Conservation Fund Act: Forest Service Has Not Taken Steps to Ensure Compliance with Limitation on Land Acquisition 2, 5 (2019), https://www.gao.gov/assets/710/703050.pdf [https://perma.cc/2QTJ-9J2R].

[175] *See* Adragna, *supra* note 174.

IV. Recasting the Great American Outdoors Act as Economic Legislation

Lawmakers hailed the Great American Outdoors Act as a landmark piece of conservation legislation.[176] And it indeed was. But I submit that the Act was also an economic recovery bill enacted amid a destructive pandemic. In this way, the jobs rationale for passing the Act is reminiscent of that of another federal program that used public works projects to boost employment during a time of economic devastation: the Civilian Conservation Corps. Conceiving of the Great American Outdoors Act as a jobs and infrastructure bill puts both its passage and underlying purpose in context; although the legislation represented the culmination of a decades-long campaign by many individuals and groups to achieve certain conservation goals, the circumstances surrounding the Act's passage are worthy of consideration when thinking about the meaning of the legislation. The Act has important similarities, both in projected impact and the context of its enactment, to the Civilian Conservation Corps.

As demonstrated above, permanent full funding of the LWCF was not a new idea. Despite widespread support, Congress had tried and failed multiple times to enact such a policy, and had also struggled over the years to seriously address the growing backlog of deferred maintenance on public lands. 2020, however, was different. And while the easy explanation for this is that the stars were simply finally aligned in terms of the ideological makeup of the House, Senate, and presidency, this account ignores the historic nature of the timeframe and the fact that major national events (like the COVID-19 pandemic) often frustrate the passage of unrelated laws.

This Section will compare the economic situation in the immediate lead-up to the passage of the Great American Outdoors Act to the economic situation that preceded the creation of the Civilian Conservation Corps program. Then, this Section will discuss the similarities between the Act and the Corps as economic programs. Finally, this Section will explore what this comparison means, and why the Great American Outdoors Act was a piece of economic legislation in addition to a conservation "win."

A. The Underlying Economic Situations Preceding the New Deal and the Great American Outdoors Act

The outbreak of the novel coronavirus COVID-19 began in Wuhan, China in December 2019, with the first confirmed case in the United States

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[176] *See, e.g.*, Press Release, Sen. Angus King, King Hails "Landmark Conservation Accomplishment" as Great American Outdoors Act Signed into Law (Aug. 4, 2020), https://www.king.senate.gov/newsroom/press-releases/king-hails-landmark-conservation-accomplishment-as-great-american-outdoors-act-signed-into-law [https://perma.cc/8KAZ-Y2RT].

discovered on January 21, 2020.[177] Nine days later, the World Health Organization declared a global health emergency.[178] The United States experienced its first reported death from COVID-19 on February 29, 2020, and just about two weeks later, President Trump declared a national emergency to deal with the crisis.[179] The urgency of this public health event necessitated measures to slow the spread of the virus as scientists raced to develop a vaccine,[180] and certain of these measures (like lockdowns and curfews) had negative economic effects[181] (at least in the short term[182]).

The economic impact of the response to the pandemic was historically dire, both on the world economy[183] and—more relevant to this Note—that of the United States.[184] Perhaps most staggering was the sudden and extreme spike in unemployment. Not even a month after President Trump declared a national emergency, "the pandemic put nearly 10 million Americans out of work, including a staggering 6.6 million people who applied for unemployment benefits in the last week of March."[185] This figure was unprecedented in a major way; until March 2020, "the worst week for unemployment filings was 695,000 in 1982."[186] But the recession of 1981–82 that was responsible for the prior unemployment filing record[187] would not be the event to which commentators came to compare the COVID-19-caused economic dev-

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[177] Erin Schumaker, *Timeline: How Coronavirus Got Started*, ABC News (Sept. 22, 2020, 11:55 AM), https://abcnews.go.com/Health/timeline-coronavirus-started/story?id=69435165 [https://perma.cc/ZWX5-RPSR].

[178] *See id.*

[179] *See id.*; *see also* Libby Cathey, *Government Coronavirus Response: Trump Declares National Emergency, Says He 'Likely' Will Get Tested*, ABC News (Mar. 13, 2020, 4:36 PM), https://abcnews.go.com/Politics/government-coronavirus-response-live-updates-trump-declares-national/story?id=69580277 [https://perma.cc/9CH5-RVE5].

[180] *See* Sarun Charumilind, *When Will the COVID-19 Pandemic End?*, McKinsey & Co. (Jan. 20, 2021), https://www.mckinsey.com/industries/healthcare-systems-and-services/our-insights/when-will-the-covid-19-pandemic-end [https://perma.cc/PX7P-YH3J].

[181] *See* Pallavi Gogoi, *You're Not Welcome Here: How Social Distancing Can Destroy the Global Economy*, NPR (Oct. 26, 2020), https://www.npr.org/2020/10/26/927064268/youre-not-welcome-here-how-social-distancing-can-destroy-the-global-economy [https://perma.cc/V8Z2-3SG6].

[182] *See Fact Check: Studies Show COVID-19 Lockdowns Have Saved Lives*, Reuters (Nov. 24, 2020, 1:46 PM), https://www.reuters.com/article/uk-factcheck-lockdowns/fact-check-studies-show-covid-19-lockdowns-have-saved-lives-idUSKBN2842WS [https://perma.cc/67ZT-7LFV] ("[E]vidence also suggest that stringent but temporary restrictions, could actually benefit the economic recovery because they reduce the spread of the disease.").

[183] *See* Gita Gopinath, *The Great Lockdown: Worst Economic Downturn Since the Great Depression*, IMFBlog (Apr. 14, 2020), https://blogs.imf.org/2020/04/14/the-great-lockdown-worst-economic-downturn-since-the-great-depression/ [https://perma.cc/3EYD-R6LH].

[184] *See* Derrick Bryson Taylor, *A Timeline of the Coronavirus Pandemic*, N.Y. Times (Jan. 10, 2021), https://www.nytimes.com/article/coronavirus-timeline.html [https://perma.cc/GS7X-478M].

[185] *Id.* (citing Ben Casselman & Patricia Cohen, *A Widening Toll on Jobs: 'This Thing Is Going to Come for Us All'*, N.Y. Times (Apr. 2, 2020), https://www.nytimes.com/2020/04/02/business/economy/coronavirus-unemployment-claims.html [https://perma.cc/ER6R-LNBG].

[186] *Id.*

[187] *See* Tim Sablik, *Recession of 1981-82*, Fed. Rsrv. Hist. (Nov. 22, 2013), https://www.federalreservehistory.org/essays/recession-of-1981-82 [https://perma.cc/62W6-344T].

astation. Instead, many looked about fifty years earlier than the 1980s to an infamous period of time: the Great Depression.

The International Monetary Fund projected that lockdowns around the globe, and other policies aimed at mitigating the spread of COVID-19, would cause the world economy to "experience the worst recession since the Great Depression."[188] Considering domestic economic figures, "[t]he pandemic delivered the most severe blow to the U.S. economy since the Great Depression as gross domestic product collapsed and millions of jobs were lost."[189] The 31.7% contraction of the U.S. economy in the second quarter of 2020 was the "sharpest quarterly drop on record."[190] Just after the United States had celebrated a fifty-year low in unemployment (3.5%) in February 2020,[191] the COVID-19 pandemic caused unemployment to skyrocket to 14.7% as the country lost 20.6 million jobs.[192] Perhaps most ominously, only about 18 million of those job losses were expected to be temporary.[193] The sheer number of lost jobs more than doubled the unemployment during the 2007–09 Great Recession, and as one reporter described it, the 14.7% figure was "a level not seen since the Great Depression."[194]

Without going into all that much detail about its underlying causes (given the focus of this Note), the Great Depression kicked off as a result of the stock market crash of 1929.[195] Stocks had been declining for about a month or so[196] when, on October 29, 1929, the Dow Jones Industrial Average took a nosedive of nearly thirteen percent.[197] To be sure, the 29th was the

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[188] Gopinath, *supra* note 183; *see also Global Economy Far Worse Off than Previously Thought, IMF Predicts*, NPR (June 28, 2020), https://www.npr.org/2020/06/28/884351897/global-economy-far-worse-off-than-previously-thought-imf-predicts [https://perma.cc/AUZ9-2MC8].

[189] Gogoi, *supra* note 181 (citing Scott Horsley, *3 Months of Hell: U.S. Economy Drops 32.9% in Worst GDP Report Ever*, NPR (July 30, 2020), https://www.npr.org/sections/coronavirus-live-updates/2020/07/30/896714437/3-months-of-hell-u-s-economys-worst-quarter-ever [https://perma.cc/33MR-X5NZ].

[190] Josh Boak, *U.S. Economy Plunged an Annualized 31.7% in Second Quarter*, AP News (Aug. 27, 2020), https://apnews.com/article/a9ef11294c55f6fc8d130194dd507d0a [https://perma.cc/89DJ-CL3H].

[191] Jeff Cox, *Job Growth Smashes Expectations for February as Unemployment Falls Back to 3.5%*, CNBC (Mar. 6, 2020, 8:30 AM), https://www.cnbc.com/2020/03/06/us-jobs-report-february-2020.html [https://perma.cc/T3X3-UN7L].

[192] Stephanie Soucheray, *US Job Losses Due to COVID-19 Highest Since Great Depression*, U. Minn.: Ctr. for Infectious Disease Rsch. & Pol'y (May 8, 2020), https://www.cidrap.umn.edu/news-perspective/2020/05/us-job-losses-due-covid-19-highest-great-depression [https://perma.cc/ZXR6-7GK2].

[193] *See* Paul Davidson, *Unemployment Soars to 14.7%, Job Losses Reach 20.5 Million in April as Coronavirus Pandemic Spreads*, USA Today (May 8, 2020), https://www.usatoday.com/story/money/2020/05/08/april-jobs-reports-20-5-m-become-unemployed-covid-19-spreads/3090664001/ [https://perma.cc/B2NL-6HU7].

[194] Soucheray, *supra* note 192.

[195] *See, e.g.*, *Stock Market Crash of 1929*, History, https://www.history.com/topics/great-depression/1929-stock-market-crash [https://perma.cc/2WSQ-3MVC].

[196] *Id.*

[197] Gary Richardson et al., *Stock Market Crash of 1929*, Fed. Rsrv. Hist. (Nov. 22, 2013), https://www.federalreservehistory.org/essays/stock-market-crash-of-1929 [https://perma.cc/S5BP-5Q5Y].

culmination of a few awful days for the market, and by the end of October the crash had wiped out "40 percent of the paper values of common stock."[198] The economic calamity of this time period is well-understood as a general matter, but it may be helpful to recite some key figures in drawing the imperfect comparison between the economic fallout from COVID-19 and the Great Depression.

It is worth noting that some have argued that the comparison between the COVID-19 contraction and the Great Depression is more than imperfect—it is wrong. Former Federal Reserve Chairman Ben Bernanke called the comparison "not . . . very good" and argued that the long-term nature of the Great Depression (it dragged on for over a decade) is a stark contrast to what many expect will be the necessary recovery time from COVID-19.[199] Two professors at Northwestern University penned an essay making the point that the better comparison is likely between the economic consequences of COVID-19 and the American economic experience from the 1918 Spanish flu.[200] This is probably correct; as one of the professors, Carola Frydman, stated, it is likely that the economy will begin to quickly rebound "[a]s soon as people feel confident again interacting and being able to go about their business."[201] Still, the essence of the comparison is the sheer amount of job loss and economic contraction, spurring government to respond with economy-boosting measures.

The Great Depression was the high-water mark on record for unemployment. As compared to the 14.7% figure at the height of COVID-19, unemployment peaked at 25.6% in May 1933 during the Great Depression.[202] To be sure, this was nearly four years into the crisis. But the lingering joblessness was not the only jarring statistic from this period of time. U.S. gross domestic product (GDP) fell by 8.5% in 1930, 6.4% in 1931, and 12.9% in 1932.[203] Finally, following the infamous stock market crash, the

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[198] *Stock Market Crash of October 1929*, VA. COMMONWEALTH UNIV. LIBRS.: SOC. WELFARE HIST. PROJECT, https://socialwelfare.library.vcu.edu/eras/great-depression/beginning-of-great-depression-stock-market-crash-of-october-1929/ [https://perma.cc/LV2K-HQLR].

[199] Scott Horsley, *'A Lot to Be Hopeful For': Crisis Seen as Historic, Not Another Great Depression*, NPR (May 17, 2020, 8:00 AM), https://www.npr.org/2020/05/17/857149873/a-lot-to-be-hopeful-for-crisis-seen-as-historic-not-another-great-depression [https://perma.cc/VLS9-PELN].

[200] Efraim Benmelech & Carola Frydman, *The 1918 Influenza Did Not Kill the US Economy*, VOX EU (Apr. 29, 2020), https://voxeu.org/article/1918-influenza-did-not-kill-us-economy [https://perma.cc/WH6Y-3G4P].

[201] Horsley, *supra* note 199.

[202] Greg Iacurci, *Unemployment Is Nearing Great Depression Levels. Here's How the Eras Are Similar – and Different*, CNBC (May 19, 2020, 8:00 AM), https://www.cnbc.com/2020/05/19/unemployment-today-vs-the-great-depression-how-do-the-eras-compare.html [https://perma.cc/3ZJK-789G].

[203] Sarah Hansen, *The Great Depression vs. Coronavirus Recession: 3 Metrics that Will Determine How Much Worse It Can Get*, FORBES (Mar. 24, 2020, 4:31 PM), https://www.forbes.com/sites/sarahhansen/2020/03/24/the-great-depression-vs-coronavirus-recession-3-metrics-that-will-determine-how-much-worse-it-can-get/?sh=3f0d338215bd [https://perma.cc/J9EU-J49N].

Dow Jones Industrial Average continued to fall over the next few years; one striking example is its over-thirty-percent drop over the course of one month in 1931.[204] In contrast, the stock market fared relatively well during the COVID-19 pandemic.[205]

B. Policy Responses to Save the Economy

As COVID-19 tossed the United States into the doldrums of unemployment and GDP loss, federal policymakers from the Federal Reserve to Congress quickly jumped into action in an attempt to stanch the economic wound. Two major policy responses stand out. First, the Federal Reserve made trillions of dollars available through various lending programs and took other monetary policy-related steps to keep the bottom from falling out of the economy.[206] What amounted to a $3 trillion "rescue" operation from the Federal Reserve led to massive gains in the stock market as the virus continued to spread.[207] Meanwhile, Congress passed multiple COVID-19 relief bills in March 2020;[208] the largest was the Coronavirus Aid, Relief, and Economic Security (CARES) Act, which President Trump signed into law on March 27, 2020.[209] The CARES Act was a $2 trillion relief measure.[210] As Senate Majority Leader McConnell stated at the time, "No economic policy can fully end the hardship so long as the public health requires that we put so much of our commerce on ice. This isn't even a stimulus package. It is emergency relief. Emergency relief. That's what this is."[211] The CARES Act provided for direct payments to individual Americans, expanded unemployment benefits, and instituted a paycheck protection program to encourage businesses to keep workers on the payroll, among other actions.[212]

The Great American Outdoors Act did not similarly authorize the immediate spending of multiple trillions of dollars. But analysts did project that

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[204] *See id.*

[205] *See* Patti Domm, *How the Pandemic Drove Massive Stock Market Gains, and What Happens Next*, CNBC (Dec. 30, 2020, 10:52 AM), https://www.cnbc.com/2020/12/30/how-the-pandemic-drove-massive-stock-market-gains-and-what-happens-next.html [https://perma.cc/MM3B-SW88].

[206] *See* Jeffrey Cheng et al., *What's the Fed Doing in Response to the COVID-19 Crisis? What More Could It Do?*, BROOKINGS INST. (Jan. 25, 2021), https://www.brookings.edu/research/fed-response-to-covid19/ [https://perma.cc/YT5V-83M6].

[207] *See* Kate Duguld, *Federal Reserve's $3 Trillion Virus Rescue Inflates Market Bubbles*, REUTERS (July 13, 2020, 6:13 AM), https://www.reuters.com/article/us-health-coronavirus-federalreserve-mar/federal-reserves-3-trillion-virus-rescue-inflates-market-bubbles-idUSKCN24E13G [https://perma.cc/C6KU-BN2W].

[208] *See* Press Release, House Comm. on Appropriations, House Passes Third Coronavirus Relief Bill (Mar. 27, 2020), https://appropriations.house.gov/news/press-releases/house-passes-third-coronavirus-relief-bill [https://perma.cc/B7QH-A2PF].

[209] CARES Act, Pub. L. No. 116-136, 134 Stat. 281 (2020).

[210] *See* Kelsey Snell, *What's Inside the Senate's $2 Trillion Coronavirus Aid Package*, NPR (Mar. 26, 2020, 5:34 PM), https://www.npr.org/2020/03/26/821457551/whats-inside-the-senate-s-2-trillion-coronavirus-aid-package [https://perma.cc/XVQ4-LRM2].

[211] *Id.*

[212] *See id.*

it would have a significant, positive impact on the economy. In June 2020, four senators announced a National Park Service study finding that the Restore Our Parks bill—the part of the Great American Outdoors Act that established the National Parks and Public Land Legacy Restoration Fund—would support an additional 100,000 jobs over the next five years.[213] This statistic came to figure prominently in the public conversation about the Act, and Senator Gardner in particular touted the number as he promoted the bill.[214] Other members of Congress also pointed to the job creation projection when announcing their support for the bill.[215]

Anyone who has ever watched a campaign advertisement knows that members of Congress always love to tout policies that create American jobs. But this one was different. In the midst of the job losses during the COVID-19 pandemic, the notion that a piece of bipartisan legislation could create 100,000 American jobs became a key rallying cry as the bill moved through the legislature and became law. Upon the bill's passage in the House, Congressman Josh Gottheimer (D-N.J.) stated, "This vital legislation . . . will invest in projects that will help create jobs during this economic crisis and in the future."[216] Jennifer Morris, CEO of The Nature Conservancy, quipped, "At a time when our country needs to create jobs and rebuild local economies while also protecting nature and places where everyone can recreate outdoors, the Great American Outdoors Act answers the call on all fronts."[217] The Senior Vice President for Conservation Policy of the National Audubon Society, Sarah Greenberger, had the following to say: "There couldn't be a more important time than now to improve parks, protect birds and wildlife, and create jobs in every state across the country."[218] And at a

[213] *See* Press Release, Sen. Mark Warner, Warner, Portman, Alexander, King Announce National Parks Study Showing Restore Our Parks Legislation Will Support More than 100,000 Jobs over Next Five Years (June 5, 2020), https://www.warner.senate.gov/public/index.cfm/pressreleases?ID=3F2FA2C2-BEC8-45A4-A6F3-57AABE707827 [https://perma.cc/UV4U-3GSA].

[214] *See, e.g.*, Press Release, Sen. Cory Gardner, Gardner Holds Meetings Across Colorado's Western Slope (July 9, 2020), https://www.legistorm.com/stormfeed/view_rss/1559182/member/2735 [https://perma.cc/ZX2K-AMSY]; Remarks on Signing the Great American Outdoors Act, 2020 Daily Comp. Pres. Doc. 569 (Aug. 4, 2020); 166 Cong. Rec. S2, 848 (daily ed. June 10, 2020); *see also* Matthew Daly, *Congress Passes Sprawling Plan to Boost Conservation, Parks*, Wash. Post (July 22, 2020), https://www.washingtonpost.com/politics/congress-passes-sprawling-plan-to-boost-conservation-parks/2020/07/22/ceefa674-cc63-11ea-99b0-8426e26d203b_story.html [https://perma.cc/TD9R-E7MA] ("Supporters say the bill will create at least 100,000 jobs, while restoring national parks and repairing trails and forest systems.").

[215] *See, e.g.*, Press Release, Problem Solvers Caucus, Problem Solvers Caucus Endorses Bill to Ensure Public Lands Are Protected and Preserved (July 10, 2020), https://problemsolverscaucus-gottheimer.house.gov/media/press-releases/problem-solvers-caucus-endorses-bill-ensure-public-lands-are-protected-and [https://perma.cc/XF7N-PRYS].

[216] Press Release, Rep. Josh Gottheimer, Gottheimer-Sponsored Bipartisan Great American Outdoors Act Passes House, Heads to President's Desk – Addresses National Parks Maintenance Backlog (July 22, 2020), https://gottheimer.house.gov/news/documentsingle.aspx?DocumentID=2100 [https://perma.cc/V4YL-2QJU].

[217] Daly, *supra* note 214.

[218] *Id.*

White House event touting the Act's enactment, Senator Gardner himself said, "The fact that this bill would create over 100,000 jobs, and the fact that many of those jobs would be in some of the communities that were hardest hit today by the pandemic is a remarkable occasion."[219]

The jobs rationale was a component part of a broader economic argument in favor of the legislation's passage. Senator Manchin tied it together in a compelling fashion during a webinar event with the Backcountry Hunters & Anglers in June 2020, highlighting the economic impact of outdoor recreation in his state of West Virginia.[220] "Every year, more than 350,000 hunters take to the woods in West Virginia to pursue game, and they bring with them $270 million in contributions to West Virginia's economy and support over 5,000 jobs," Senator Manchin explained.[221] He continued: "Nationally, 47 million Americans participate in hunting and fishing. And in doing so, they provide direct economic benefits in excess of $200 billion per year and support over 1.5 million jobs."[222] Finally, Senator Manchin cited a Boston University study[223] that found that fully funding the LWCF would "support 15,000 to 28,000 jobs *at a time when our country needs it most*."[224] The connection here is that the LWCF would increase access for sportsmen and sportswomen, facilitating the economy-boosting recreation activities.

Under former Interior Secretary Zinke, the Interior Department had highlighted such economic arguments in the years preceding the COVID-19 pandemic. In July 2017, Secretary Zinke announced the creation of a Made in America Recreation Advisory Committee; in the press release about the move, the Department cited an Outdoor Industry Association analysis[225] which found that "the outdoor recreation industry generates $887 billion in direct spending and supports 7.6 million jobs across all 50 states."[226] The ongoing COVID-19-related economic recovery efforts, of course, amplified the urgency of capitalizing on this economic opportunity.

The pandemic may have also created a particular need for maintenance of public lands. Going forward, Americans may do less international

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[219] Remarks on Signing the Great American Outdoors Act, *supra* note 214.

[220] *See* Backcountry Hunters & Anglers, *Rendezvous Exclusive: Understanding the Great American Outdoors Act*, YouTube (June 8, 2020), https://www.youtube.com/watch?v=57qzF7PLPQY [https://perma.cc/RGP4-NHV8].

[221] *Id.* at 7:08.

[222] *Id.* at 7:22.

[223] Heidi Peltier, Boston Univ. Pardee Sch. of Glob. Stud., Employment Impacts of Conservation Spending (2020), https://www.bu.edu/pardee/files/2020/06/Employment_Impacts_of_Conservation_Spending-Peltier2020.pdf [https://perma.cc/Y4YN-PAUM].

[224] Backcountry Hunters & Anglers, *supra* note 220, at 7:35.

[225] Outdoor Indus. Ass'n, The Outdoor Recreation Economy (2017), https://outdoorindustry.org/wp-content/uploads/2017/04/OIA_RecEconomy_FINAL_Single.pdf [https://perma.cc/732A-QLTV].

[226] Press Release, U.S. Dep't of the Interior, Secretary Zinke Announces Made in America Recreation Advisory Committee (July 18, 2017), https://www.doi.gov/pressreleases/secretary-zinke-announces-made-america-recreation-advisory-committee [https://perma.cc/9KZ5-AN4D].

travel.[227] Some of the most attractive domestic options for American travelers are national parks, and amid the COVID-19 outbreak and social distancing mandates, citizens gained a newfound appreciation for open spaces.[228] Of course, a decrease in international travel may, on the whole, hurt the tourism-reliant businesses surrounding national parks, as foreign vacationers choose to spend their time elsewhere.[229] But as Americans rediscover their national parks, the Great American Outdoors Act gives the government the tools it needs to best serve the emerging leisure preferences of its own citizenry. Moreover, some, including Linda Bilmes at the Harvard Kennedy School, have argued that "[t]he pandemic has . . . led Americans to rediscover the outdoors. The national parks not only provide economic benefits but also health and enjoyment."[230] Bilmes further posits that "[a]lthough many elected officials of both parties have long supported conservation, the unusual show of bipartisanship that led to enact[ment of] this legislation is largely due to the political and economic consequences of the COVID-19 pandemic."[231]

Senator Lee took issue with the idea that tourism-related economic boosts were a sufficient reason to support the Act.[232] The day after Senator Manchin linked outdoor recreation to the flourishing of local economies, Senator Lee took to the floor of the Senate for a thirty-minute speech against the Great American Outdoors Act. During that speech, he stated the following:

> Some claim, rather audaciously, that the outdoor recreation economy is a major boon to these very same communities that are being impoverished by [federal land management policies]. But usually, nearly always, people who say that aren't people who live in those communities. Seasonal tourism is not a sustainable core industry for most communities. And much of the money spent on outdoor recreation ends up going to apparel, equipment, and gear

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[227] *See* Hannah Sampson & Natalie B. Compton, *11 Ways the Pandemic Will Change Travel*, WASH. POST (June 15, 2020), https://www.washingtonpost.com/travel/2020/06/15/11-ways-pandemic-will-change-travel/ [https://perma.cc/PXN4-FP3Z].

[228] *See* Hannah Miller, *National Parks Could Be this Summer's Go-To Vacation Spots*, CNBC (May 23, 2020), https://www.cnbc.com/2020/05/23/national-parks-could-be-summers-go-to-vacation-spots.html [https://perma.cc/C8C2-X4VE].

[229] K. Sophie Will, *COVID-19 Kept International Travel from Utah's National Parks, Hurting Local Businesses*, SPECTRUM (Dec. 26, 2020), https://www.thespectrum.com/story/news/2020/12/21/covid-19-stopped-international-travel-utahs-parks-businesses/6472430002/ [https://perma.cc/DKZ5-EVNN].

[230] Dan Harsha, *The Biggest Land Conservation Legislation in a Generation*, HARV. GAZETTE (July 27, 2020), https://news.harvard.edu/gazette/story/2020/07/the-likely-impact-of-great-american-outdoors-act/ [https://perma.cc/T2GG-TWFC].

[231] *Id.*

[232] Sen. Mike Lee, Floor Remarks Against Permanent Land Acquisition (June 9, 2020), https://www.lee.senate.gov/public/index.cfm/speeches?ID=3D3B92A4-C8DE-4D9F-A7F7-75FB1363490F [https://perma.cc/YN7N-PPBV].

> from large, out-of-state companies. Rural, public lands counties don't see a penny of it.[233]

And yet, Senator Lee's objections notwithstanding, the Act moved ahead. But more importantly for the purposes of this Section, it started to draw some comparisons to the New Deal-era Civilian Conservation Corps.

Some argued that the Act was merely "an important first step toward the creation of a conservation jobs program."[234] But Senator Martin Heinrich (D-N.M.) predicted that because the infrastructure provisions of the Act themselves would "put people directly to work," there would "then be a tail of economic activity, just like what occurred in the 1930s and '40s with the Work Progress Administration and the Civilian Conservation Corps."[235] An essay in the *National Parks Traveler* made the point that "[t]he [Civilian Conservation Corps] and other New Deal programs brought a huge infusion of resources to the National Park Service, and recent passage of the Great American Outdoors Act promises the same to address needs of the National Park System today."[236] And a column in *The Roanoke Times* described the Act as "emulat[ing]" the creation of the Corps, framing members of Congress's advocacy for the bill as based at least in part on "see[ing] how some of those [forthcoming job] opportunities can be used today to help people who have lost their jobs during the pandemic get back to work."[237]

Looking back to the Franklin Delano Roosevelt administration, the establishment of a Civilian Conservation Corps (CCC) represented an important development in the enactment of President Roosevelt's New Deal program.[238] The year was 1933. On March 31, President Roosevelt signed the authorizing legislation for the CCC into law; its official title was "An Act for the relief of unemployment through the performance of useful public work, and for other purposes."[239] Just a few days later, President Roosevelt

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[233] *Id.*

[234] Bob Wheeler, *To Get Ohioans Back to Work, Sen. Rob Portman Should Look to the Outdoors*, COLUMBUS DISPATCH (Oct. 7, 2020), https://www.dispatch.com/story/opinion/columns/2020/10/07/modern-civilian-conservation-corps-could-employ-jobless-americans/3635629001/ [https://perma.cc/2XHB-2WHG].

[235] Algernon D'Ammassa, *Q&A: Sen. Martin Heinrich Hails Passage of Great American Outdoors Act, Looks to Gila*, LAS CRUCES SUN NEWS (June 18, 2020, 8:16 PM), https://www.lcsun-news.com/story/news/2020/06/18/great-american-outdoors-act-conservation-bill-heinrich-new-mexico/3214888001/ [https://perma.cc/ACE9-GYCJ].

[236] John Miles, *It's Time for a CCC Revival for National Parks and Other Public Lands*, NAT'L PARKS TRAVELER (Jan. 15, 2021), https://www.nationalparkstraveler.org/2021/01/essay-its-time-ccc-revival-national-parks-and-other-public-lands [https://perma.cc/T7L9-EH3A].

[237] Amy Friedenberger, *Senate Passes Great American Outdoors Act, Conservation Proposal Championed by Sen. Mark Warner*, ROANOKE TIMES (June 17, 2020), https://roanoke.com/news/local/senate-passes-great-american-outdoors-act-conservation-proposal-championed-by-sen-mark-warner/article_10cf558c-7a88-5a35-b523-194da73e3042.html [https://perma.cc/K4YC-TX5B].

[238] *See FDR Creates Civilian Conservation Corps*, HISTORY (Apr. 2, 2020), https://www.history.com/this-day-in-history/fdr-creates-civilian-conservation-corps [https://perma.cc/DQ4K-S3KD].

[239] Pub. L. 73-5, 48 Stat. 22 (1933).

signed Executive Order 6101 to implement the law and start the CCC.[240] By 1933, the economic outlook was bleak for the United States. By then, the Great Depression had reached its "lowest point"; approximately 15 million Americans were unemployed.[241] The CCC represented an opportunity to triage some of this unemployment, and by July 1, nearly 300,000 men "were 'in the woods' in 1,468 camps" to do various types of environmental stewardship jobs.[242] The workers were mainly "unemployed, unmarried U.S. male citizens between the ages of 18 and 26" who were healthy and able "to perform hard physical labor."[243] Under the guidance of the Interior and Agriculture Departments, they "fought forest fires, planted trees, cleared and maintained access roads, re-seeded grazing lands and implemented soil-erosion controls."[244] They also "built wildlife refuges, fish-rearing facilities, water storage basins and animal shelter."[245] Moreover, "[t]o encourage citizens to get out and enjoy America's natural resources, [President Roosevelt] authorized the CCC to build bridges and campground facilities."[246] Some even referred to the CCC as "Roosevelt's Tree Army."[247]

The CCC had various social and economic benefits, particularly for young Americans. CCC workers took "courses that ranged from basic literacy to vocational skills" and the program helped these unemployed, young men stay "out of trouble."[248] Moreover, families across the nation felt the benefit of the workers' allotment checks as the United States sought a way out of the Great Depression.[249] Consider the example of Arkansan CCC workers; these young men "spent some of their earnings in communities near camps, thus propping up some community-scale economies. The CCC also injected the state economy with capital for statewide CCC-contracts."[250] The CCC "infused money into the economy at a time when it was urgently needed, and its work had lasting value."[251] After nine years, the CCC could count the following victories: "three billion trees planted, 125,000 miles of

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[240] Exec. Order No. 6,101 (Apr. 5, 1933).

[241] *Great Depression History*, History (Feb. 28, 2020), https://www.history.com/topics/great-depression/great-depression-history [https://perma.cc/KB7N-RV58].

[242] Joseph M. Speakman, *Into the Woods: The First Year of the Civilian Conservation Corps*, Nat'l Archives (2006), https://www.archives.gov/publications/prologue/2006/fall/ccc.html [https://perma.cc/6G63-V2DK].

[243] *Great Depression History*, *supra* note 241.

[244] *Id.*

[245] *Id.*

[246] *Id.*

[247] *Id.*

[248] *Stock Market Crash of October 1929*, *supra* note 198.

[249] *See CCC Brief History*, CCC Legacy, http://ccclegacy.org/CCC_Brief_History.html [https://perma.cc/QEK4-QMR8].

[250] Jess Porter, *Economic Impact in Arkansas*, Univ. of Ark. Ctr. for Ark. Hist. & Culture: Civilian Conservation Corps Ark. (2019), https://ualrexhibits.org/ccc/economic-impact-in-arkansas [https://perma.cc/V34B-3PG5].

[251] Benjamin Alexander, *FDR's Forest Army: How the New Deal Helped Seed the Modern Environmental Movement 85 Years Ago*, Conversation (Apr. 2, 2018), https://theconversation.com/fdrs-forest-army-how-the-new-deal-helped-seed-the-modern-environmental-movement-85-years-ago-91617 [https://perma.cc/RF34-PMF6].

truck trails built, 89,000 miles of telephone lines, 800 new state parks developed, 40 million acres of farm lands benefiting from erosion control work, rehabilitation of drainage ditches, better grazing conditions on the public domain, and an increasing wildlife population."[252]

Is the Great American Outdoors Act an example of a modern CCC? In April 2020, just a month after the onset of COVID-19 but a few months before the passage of the Great American Outdoors Act, Professor Benjamin F. Alexander lamented that the creation of "anything like the CCC is particularly far off" to address the economic fallout of the pandemic.[253] But, I submit, the Great American Outdoors Act—creating 100,000 jobs for maintenance projects on public lands—proved Professor Alexander wrong. Like the law authorizing the CCC, the Great American Outdoors Act was passed amid a time of economic collapse, and promises to support thousands of outdoor-related jobs. The work of the Restoration Fund will support significant milestones in the revitalization of America's natural landscapes. Viewed in this light, the history recounted above is significant. The passage of the Great American Outdoors Act, however, is not just another dot on that line—a serendipitous political star alignment in the House, Senate, and White House that led to this bill finally making it through. Instead, one should view the pandemic as a partial catalyst for the bill's ultimate success; the Great American Outdoors Act, like the legislation authorizing the CCC, was not only conservation legislation, but also a key component of a broader federal economic recovery effort. Consider that while the terror attacks of September 11, 2001 derailed already-fleeting hopes of passing a CARA-like bill in the early 2000s, the Great American Outdoors Act passed in spite of the ongoing COVID-19 pandemic; perhaps the better interpretation is that the Act passed, in part, *because* of the pandemic.

One might wrinkle one's nose at such a characterization; after all, the CCC was one of the key pillars of President Roosevelt's New Deal, a program that conservatives have long decried for its high price tag and unprecedented intervention into the free market on the government's behalf.[254] So how, then, is it plausible that a Republican president and a Republican Senate played such a large role in the passage of the Great American Outdoors Act? The Great American Outdoors Act might also then represent a triumph—at least a temporary one—of a different kind of conservatism, less

[252] Gerald W. Williams, *The Civilian Conservation Corps and the National Forests*, Forest Serv. Today (Mar. 21, 2008), https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fsbdev3_004791.pdf [https://perma.cc/V4UT-LWS3].

[253] Jacqueline Alemany & Brent D. Griffiths, *Young People Are Being Left Out of Coronavirus Economic Relief Efforts. That Could Be a Big Problem.*, Wash. Post (Apr. 23, 2020), https://www.washingtonpost.com/politics/2020/04/23/young-people-are-being-left-out-coronavirus-economic-relief-efforts-that-could-be-big-problem/ [https://perma.cc/B9FS-NCDD].

[254] *See* Adam Cohen, *Republicans' Latest Talking Point: The New Deal Failed*, N.Y. Times (Jan. 11, 2009), https://www.nytimes.com/2009/01/12/opinion/12mon4.html [https://perma.cc/7PJ4-8THT].

concerned with the national debt and free-market economics. One set of commentators dubbed this "cultural conservatism," noting that "cultural conservatism and stronger needs for security and certainty often correlate only weakly with economic attitudes. In fact, they correlate with interventionist economic preferences more often than with right-wing free-market preferences."[255] President Trump drove the Republican shift from an affinity for *laissez faire* economics to a comfort with more government spending, "shatter[ing] Republican orthodoxy."[256] Viewed within this framework, President Trump's "Sorry, Russ" remark represented another important milestone in the GOP's shifting economic view.[257]

But the main takeaway is this: the pandemic did not disrupt the passage of the Great American Outdoors Act. In fact, the economic fallout from COVID-19 played a role in the Act's enactment—something Congress had tried and failed to achieve for many years. To fully understand the Great American Outdoors Act, one must fully understand the circumstances underlying its passage. And to do so, one should look to the most on-point analogue to the Act: President Roosevelt's Civilian Conservation Corps in the early 1930s.

V. Conclusion

The Great American Outdoors Act was among the most meaningful pieces of legislation passed in 2020, if not the entire Trump presidency. But its legislative history truly began decades prior to President Trump's assumption of office. That history demonstrates a number of starts and stops, but for conservationists, a happy ending. In 2020, Congress established a National Parks Restoration Fund to address the federal government's backlog of deferred maintenance on federal lands, and it secured permanent and full funding for the popular Land and Water Conservation Fund. Some argued that such moves were emblematic of a Congress prone to profligate spending,

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[255] Christopher Federico et al., *Will the Coronavirus Make Conservatives Love Government Spending?*, Wash. Post (Apr. 15, 2020), https://www.washingtonpost.com/politics/2020/04/15/will-coronavirus-make-conservatives-love-government-spending/ [https://perma.cc/7ZQE-QKKU].

[256] Jeff Stein, *Trump's Quest to Shatter GOP Economics Reached its Culmination in 2019*, Wash. Post (Dec. 27, 2019, 5:00 PM), https://www.washingtonpost.com/business/2019/12/27/trumps-quest-shatter-gop-economics-reached-its-culmination/ [https://perma.cc/MBV8-96XX].

[257] To be sure, when thinking about fiscal conservatism under the Trump administration, one should also consider that President Trump's budget proposals did regularly feature deep cuts in various areas (with the exception of the military). *See* Joel Achenbach et al., *Trump Budget Cuts Funding for Health, Science, Environment Agencies*, Wash. Post (Feb. 10, 2020, 4:38 PM), https://www.washingtonpost.com/science/trump-budget-cuts-funding-for-health-science-environment-agencies/2020/02/10/9c8dd784-4c2d-11ea-b721-9f4cdc90bc1c_story.html [https://perma.cc/QWT2-WJG2]. A plausible, alternate interpretation is that the anomalous political and economic circumstances surrounding the Great American Outdoors Act's passage undercut the persuasiveness of some of President Trump's advisors who were more averse to increased federal spending.

insufficiently respectful of private property rights, and less than eager to be held accountable for its appropriations decisions. But after many years, these arguments did not carry the day.

Considering the lead-up to the Great American Outdoors Act, one can see that the passage of the law was not all about conservation. In fact, economic considerations played into Congress's ultimate support for the legislation, helping the bill stay alive as the COVID-19 pandemic ravaged the nation. This Note draws a comparison between the Act and the 1933 establishment of the Civilian Conservation Corps. Both supported jobs in service of conservation goals, coming about in a time of economic devastation. Seeing how the jobs rationale boosted the Act as it neared the finish line of the legislative process partly explains how, after so many years of trying and failing to get similar policies enacted, Congress was finally able to get this done.