

Biden gears up for fight against bipartisan push to end COVID-19 emergency

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President Joe Biden is embarking on yet another battle over the COVID-19 pandemic, this time facing off with more than 60 senators who seek to end the national state of emergency over the virus.

In place since March 2020, the state of emergency grants Biden expanded powers, which he has used to push a host of policies. Tuesday night, the Senate voted 62-36 to end those emergency powers, with 13 senators who caucus with the Democrats joining all Republicans in support.

“Just two months ago, the president stated the coronavirus pandemic was 'over' in a *60 Minutes* interview,” said Sen. Roger Marshall (R-KS), who sponsored the resolution. “Yet despite all the advances we’ve made in our fight against the virus and the victorious declaration by our chief executive, this administration insists the national emergency declaration remain in place.”

The vote represents a filibuster-proof majority, though the resolution hasn't been taken up in the House. Sens. Ben Sasse (R-NE), who is leaving to become a university president, and Raphael Warnock (D-GA), who is in the midst of a runoff election, abstained from voting.

Former President Donald Trump declared the first emergency, which Biden extended in February 2021 and February 2022. The Senate voted 48-47 along party lines to end emergency powers last March, but the Democratic-controlled House never took it up, and Biden threatened a veto.

Conservatives argue the emergency declaration allowed for damaging lockdowns and school closures, as well as trillions of dollars in spending that has fueled inflation.

Now, with 13 left-leaning senators on board, Biden's grip on expanded powers is more threatened than ever.

"This is a pure power grab by Biden," said Jenny Beth Martin, honorary chairwoman of Tea Party Patriots Action. "He wants to permanently keep powers that were designated for emergencies only, and the reason is simple: to increase government control over people's lives. Any fair-minded person can see that."

Accusations of pandemic flip-flopping have dogged Biden for most of 2022.

In September, Biden twice told CBS correspondent Scott Pelley that "the pandemic is over," noting that no one was wearing masks while strolling through the Detroit Auto Show.

The White House's mask mandate ended six months ago, and the Centers for Disease Control and Prevention argued in May that Title 42 should be lifted, citing "current public health conditions and an increased availability of tools to fight COVID-19."

Yet the Biden administration has been stubbornly resistant to ending most of its pandemic programs and ceding its powers.

The federal vaccine and mask mandates, along with Biden's \$500 billion student debt transfer, all rested legally on COVID-19 being an emergency and were ended only at the pen of a judge. The White House is reportedly looking to extend the student loans repayment pause, which also began in March 2020, into next year.

Should Biden veto the resolution, a two-thirds majority of both the House and Senate could override. That would require 290 House members and 67 senators in a full chamber, which is five more than the number who supported Marshall's resolution.

Biden's emergency powers stem from the National Emergencies Act of 1976, which was also used by Trump in 2019. Trump declared an emergency at the southern border in an attempt to secure funding for his wall.

In both cases, the power of the president to declare an indefinite emergency that can only be ended by two-thirds of Congress, especially in such partisan times, is ripe for abuse, argues CATO Institute scholar Ilya Somin.

"The idea of an indefinite emergency undermines the rationale for declaring an emergency power in the first place," he said. "Sometimes you need to act quickly, and Congress can't do that, which is reasonable. But there should be a time limit unless Congress votes to extend it."

Medically speaking, there may be justification for keeping the declaration around a little longer, argues University of California, Irvine public health professor Andrew Noymer.

"I'd personally like to get through the winter before we lift [the emergency]," Noymer said. "I actually think vetoing it is the right call here, should it come to that."

Noymer points to last winter, when the emergence of the omicron variant threw the United States and other nations for a loop during the holidays. He also points to complexities that could come with ending the declaration. Several COVID-19 tests and treatments, including Paxlovid, are approved under an emergency use authorization, which could be threatened if the emergency ends. The *Washington Examiner* has reached out to the Food and Drug Administration for comment.

Noymer said it's difficult to pinpoint an exact date for when a pandemic ends, though he acknowledged the bipartisan Senate vote shows that the public is starting to get wary.

"It's become kind of a parlor game to talk about whether it's over or not," he said. "In some ways, it is, and in some ways, it's not."