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## With Build Back Better stalled, the Left pushes Biden to act alone

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With the Build Back Better Act wounded, perhaps fatally, by the public defection of West Virginia Democratic Sen. Joe Manchin, liberals are calling on President Joe Biden to go solo in fulfilling his agenda.

But those calls are meeting resistance from opponents who say they're bad policy at best and illegal at worst.

Seattle-based Rep. Pramila Jayapal, leader of the Congressional Progressive Caucus, penned an op-ed in the *Washington Post* calling on Biden to enact portions of his Build Back Better plan via executive order.

"We are calling on the president to use executive action to immediately improve people's lives," Jayapal wrote, adding she'd keep working to push the legislation in Congress. "Taking executive action will also make clear to those who hinder Build Back Better that the White House and Democrats will deliver for Americans."

The \$2.4 trillion bill includes programs such as universal preschool, subsidized child care, paid family leave, and Medicare and Medicaid expansion.

Jayapal added in a tweet, "I'm calling on [Biden] to join us on a two track strategy — to enact as many relief programs as possible through Executive Action while we work on this critical legislation."

It's unclear whether Biden is interested in moving his agenda this way. Even if he was, the legality of such moves is questionable.

Tea Party Patriots Action Honorary Chairwoman Jenny Beth Martin said Biden would be stepping outside the law if he enacted any of the bill's major programs without congressional approval.

"The Constitution does not empower the president to appropriate funds; only congress can do that," she said in a statement provided to the *Washington Examiner*. "Were he to attempt that, he would be dropping any pretense that he means to preside over anything but the most radical presidency in American history. He would be challenged, and would lose, in the courts of law."

However, a bit of creativity could give Biden wide latitude to move his agenda, according to Cato Institute research fellow William Yeatman. For one, the Senate parliamentarian has already stripped out parts of the act related to climate change and immigration that Biden could theoretically move alone.

Beyond that, there's precedent for using emergency powers to enact policy. For example, President Donald Trump declared an emergency at the southern border to divert funding toward construction of a wall. Biden could theoretically declare a national climate emergency or a COVID-19 emergency to get funding for Build Back Better programs. This would continue a long-standing trend of more legislation coming from the executive branch at the expense of the legislative branch.

"Rep. Jayapal is calling for executive action in the face of congressional failure. That is a template for both parties today," Yeatman said. "From a constitutional standpoint, it's a bizarre situation — a congressional leader asking the president to run roughshod over congressional prerogatives."

Jayapal doesn't specify which parts of Build Back Better Biden should enact unilaterally. Nonetheless, fellow progressives have backed her calls. Democratic Rep. Adriano Espaillat told CNN this might be "one juncture in history ... where we have to look at all possible options, and [a presidential executive order] is certainly one of them."

New York Rep. Alexandria Ocasio-Cortez also supports the backup plan.

With Democratic leaders holding out hope to pass the Build Back Better Act despite the opposition of 51 senators, the executive action push may be more of a public pressure campaign than a true call to action. *National Review Online* editor Philip Klein argued in an [opinion piece](#) that progressives are bluffing to dial up the pressure on Manchin.

"The reality is that if the action is legal, it is not likely to come anywhere near what Build Back Better was trying to do," Klein wrote. "And if it actually approximates Build Back Better, it can in no way be constitutional."

Manchin's Dec. 19 statement that he would vote against the social spending bill sent shock waves through Washington. Despite his previous criticisms of the bill, the White House and liberal Democrats said Manchin had [broken promises](#) to support the legislative framework.

Whether via executive order or votes on the Senate floor, Democrats pledge to keep the Build Back Better Act alive in 2022. Senate Majority Leader Chuck Schumer said he'll still call for a vote in January, and Maryland Sen. Ben Cardin told *Fox News Sunday* that Democrats are united

in getting a bill to Biden's desk. One option he raised is passing some portions of the bill as stand-alone items.

Whether that strategy will satisfy the most liberal Democrats, some of whom still regret that the bipartisan Infrastructure Investment and Jobs Act was allowed to pass ahead of Build Back Better, remains to be seen.

"We want to see it as comprehensive as possible," Cardin said. "But we need to make sure we have the votes to pass it, so that means it will be different than some of us would like to see."