BACKGROUNDER

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Road to Nowhere: How Biden and Congress Detour Highway Funds

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KEY TAKEAWAYS

Passage of President Biden's deeply flawed infrastructure bill has handed the Administration an opportunity to push an openly left-wing transportation agenda.

Federal spending on infrastructure, especially through the Highway Trust Fund, is often enormously wasteful and has nothing to do with improving roads.

To reduce wasteful spending, Congress should decentralize control of surface infrastructure, push back against executive overreach, and eliminate union handouts.

The bulk of federal infrastructure spending flows through the Highway Trust Fund (HTF), which was established by the Federal Aid Highway Act of 1956.[1] The fund was initially focused on facilitating a full nationwide grid of highways. Though this work was officially completed in 1992, Congress has repeatedly chosen to use the fund for an array of programs that have less and less to do with the HTF's original purpose over time.[2]

Congress passed H.R. 3684, the Infrastructure Investment and Jobs Act (IIJA) in November 2021.[3] The legislation included an extension of pre-existing spending through the HTF along with $550 billion in new spending on both transportation and non-transportation infrastructure.[4] Supporters of the IIJA predicted that it would improve infrastructure in their home states.[5]

The IIJA already had many flaws as enacted. It stands to add $256 billion to the national debt,[6] despite using a variety of budget gimmicks.[7] The legislation moved many aspects of infrastructure policy in a centralized and left-leaning direction, placing power in the hands of federal bureaucrats to seek nebulous progressive goals such as "equity,"—rather than focusing on practical needs—and increasing spending on transportation methods such as mass transit that already receive disproportionate funding.[8]

Within a few months of President Biden signing the IIJA into law, his Administration announced initiatives, orders, and "guidance" that significantly undercut the legislation's bipartisan spirit. The Administration is advancing policies that have been championed by progressives for years, using the increasingly broad discretion that Congress has delegated to executive branch agencies—and often even exceeding those authorities.

Both the Biden Administration's infrastructure agenda and the IIJA are exacerbating the HTF's degradation. Much of the erosion is hidden by niche programs nested within larger ones and technocratic jargon that obscures what the federal government is actually using taxpayer dollars on.

It is vital to understand the roots of the Biden infrastructure agenda and recognize that the best way to avoid similar potholes in the future is to reclaim control from Washington. Otherwise, taxpayer dollars will have to run an increasingly long gauntlet to reach the end goal of better roads and bridges.

A Utopian Approach to Safety

Seeking a reduction in transportation-related fatalities is a sensible and worthwhile aspect of infrastructure planning. There has been substantial progress in this area during the past century, including a 94 percent reduction in the number of deaths per mile driven.[9] Yet there are thousands of deaths every year for both drivers and non-drivers alike on the nation's roads, and deaths per mile have risen since the start of the COVID-19 pandemic.[10]

Rather than limiting federal involvement to aspects in which the federal government has responsibility or expertise (such as vehicle design regulation and roadway safety research) or limiting goals to something achievable (such as incremental safety improvements), progressives and the Biden Administration believe that federal action can achieve a goal of "zero roadway fatalities."[11] This would involve expanding federal involvement and control over every aspect of surface transportation.

The utopian approach to road safety seeks an impossible goal and largely ignores trade-offs or limitations. This is a textbook example of what economist Thomas Sowell describes as the "unconstrained vision," which prioritizes perfecting the human condition over practical considerations.[12]

Terminology

There are a variety of terms and concepts associated with the progressive approach to road safety, including:

Road diets and traffic calming. This involves deliberately inducing congestion, often by reducing the number of driving lanes, as a way to lower speeds. Transportation Secretary Pete Buttigieg has endorsed the concept, which he used during his time as mayor of South Bend, Indiana.[13]

While there is no specific federal program for road diets, they are eligible for federal funding even though they cause a reduction of infrastructure capacity, which runs in diametric opposition to the founding purpose of the federal-aid highway system.[14] Federal Department of Transportation grants for road diets include projects in Ferndale, Michigan, in 2015;[15] Baldwin, New York (approved during the Trump Administration but not yet completed);[16] and Durango, Colorado (set to begin in summer 2022).[17] There are many others.[18]

Road diets can clog up vitally needed local arterials[19]—and can even lead to deaths when emergency response vehicles or evacuations are delayed.[20] These problems can sink projects before they start. For example, voters in Bethlehem, New York, rejected a federally subsidized road diet project in a 2021 referendum on the same day that they voted for a full slate of Democrats in local elections,[21] with opposition caused by concerns over congestion.[22]

In certain cases, reducing the number of driving lanes can make sense based on the needs and preferences of a community. However, those projects should be decided, carried out, and funded by local communities rather than the federal government.

Vision Zero. This utopian concept is aimed at eliminating pedestrian deaths. Vision Zero can entail practical changes, such as improved walkways, but also dubious ones, such as creating networks of speed enforcement cameras to levy fines or adding curb extensions to induce congestion.[23] In this way, Vision Zero overlaps road diets and traffic calming. Secretary Buttegieg has cited Hoboken, New Jersey, as a positive safety example based on their Vision Zero program.[24]

While rhetoric surrounding the topic of pedestrian safety conjures visions of reckless drivers striking helpless people in crosswalks, reality is more complicated. Pedestrians wandering into the street while intoxicated or distracted or crossing a road at night outside of a marked intersection, are significant factors in pedestrian deaths that are extremely difficult to resolve through public policy.[25]

As with road diets, there is no federal program for Vision Zero projects, but they are eligible for federal grants.[26] The Administration's inclusion of Vision Zero as part of its American Jobs Plan[27] and the IIJA's $5 billion Safe Streets and Roads for All program[28] make federal subsidies for local Vision Zero initiatives a near certainty.

Complete Streets. "Complete Street" is a combination of several concepts, including road diets, Vision Zero, bike lanes, sidewalks, lighting, and more.[29] Of these, bike lanes (which service only a small percentage of the public) are perhaps the distinguishing feature of a Complete Street.[30] Section 11206 of the IIJA provides an 80 percent federal cost share for qualifying projects, and the Administration is starting a Complete Streets Initiative as part of its safety agenda.[31]

Projects along these lines can sometimes make sense on a local level, but not universally.[32] Further, the concept is far removed from the primary goals of the interstate highway system and thus should not be a federal priority. Federal subsidies for purely local projects can lead to wasteful spending, as local officials are more likely to view federal dollars as "free money" compared to projects exclusively funded by local taxes.[33] These types of projects will receive a substantial spending boost through the Highway Safety Improvement Program, which is funded by $15.6 billion from the IIJA.[34]

As with many other areas of domestic policy, federalism and practicality should guide how policymakers approach the issue of road safety. Local solutions are needed for local problems. Federal overreach is not the solution to a problem that has a multitude of causes and varies substantially among different regions of the country as well as among urban, suburban, and rural areas. While federal bureaus such as the National Highway Traffic Safety Administration can provide research and information, decisions about road infrastructure design and funding should primarily take place at the state and local levels.

Spending Billions on "Highway" Accounts—Without Building Highways

Discussion of federal infrastructure funding often focuses on top-line numbers, such as the share or absolute amount that is dedicated to highways.

Yet highway account top-lines hide an enormous amount of wasteful activity that has more to do with enabling local pork projects than with improving the interstate highway system.

- **Congestion Mitigation and Air Quality (CMAQ).** In theory, CMAQ funds projects that reduce road congestion and thereby reduce air pollution. In practice, CMAQ is a slush fund for state and local governments and can be used toward egregiously wasteful boondoggles such as streetcars.[35] CMAQ is set to receive $13.2 billion under the IIJA.[36]

- **Transportation Alternatives Program (TAP).** Nestled within the Surface Transportation Block Grant, TAP is a federal subsidy for exclusively local non-highway infrastructure such as bike paths, walk paths, and sidewalks. It functions as both a slush fund and as a means of ensuring maximum amounts of administration: Local officials work with state employees to get their projects on the statewide wish list, and state employees work with federal employees to ensure the full set of statewide projects comply with federal statute.[37] Funding for sidewalks and bike lanes should not require three levels of bureaucrats—yet TAP will receive $7.2 billion under the IIJA to do just that.[38]

- **Metropolitan Planning Program (MPP) and Carbon Reduction Program (CRP).** While metropolitan planning organizations (MPOs) have received federal funding since the Highway Act of 1962, the CRP is a new creation within the IIJA. Both subsidize and micromanage urban infrastructure development. State governments and MPOs will create CRP projects to fulfill goals of carbon reduction strategies, though the end result will likely be similar to CMAQ and TAP: subsidies for local pork. The CRP will receive $6.4 billion under the IIJA, and the MPP will receive $2.3 billion.[39]

- **Reconnecting Communities Pilot Program.** Although it accounts for "only" $1 billion of IIJA spending, the Reconnecting Communities program received significant attention when the Biden Administration initially proposed $20 billion in spending to "redress historic inequities" related to infrastructure.[40] This is a reference to instances of the government's power of eminent domain being used to run expressways through neighborhoods (often in majority-minority areas), destroying or severely damaging them in the process. As with road diets, the program entails a reduction in highway capacity as freeways are converted into local streets, most likely arterials.

While there can be no denying that central planners have done tremendous damage to poor neighborhoods for the sake of highways, converting existing freeways into local roads in an attempt to restore neighborhoods from decades or generations ago is a complicated proposition.[41] Ironically, converting limited access freeways into local arterials would run contrary to the goal of improving safety, since arterials are responsible for an outsized share of road deaths for both passengers and pedestrians.[42]

- **"Equity" Goals.** In addition to the previous program, the Biden Administration is consistently promoting progressive "equity" goals. At a keynote address to the 2022 Transportation Research Board annual meeting, Secretary Buttigieg stated, "Every transportation decision is inherently in many ways a decision about equity, and that's one of the reasons why we're building equity into our grant criteria."[43]

  In that vein, the Department of Transportation has created an "equity" resource page for infrastructure planners across the country[44] that highlights a government-wide Biden executive order on "advancing racial equity."[45] As such, the Administration will surely seek to fund more projects along the lines of Reconnecting Communities through larger general-purpose grant programs.

When an elected official at any level of government bemoans a lack of funding for highways, it is vital to keep in mind how much federal spending labeled as going toward highways is stealthily funneled in other directions. Each of these programs should be eliminated as part of a broader effort to streamline the increasingly bloated and unmanageable federal government.

Biden Administration Memo Seeks Massive Power Grab

On December 16, 2021, the Federal Highway Administration (FHA) issued a memo that attempts to circumvent both the IIJA and decades of settled federal policy for the sake of dragging infrastructure policy further left.[46]

The FHA memo repeatedly uses the slogan "Build a Better America," which the Administration began using following the passage of the IIJA in a blatant attempt to link the IIJA with the controversial Build Back Better

Act.[47] By laying out goals and priorities for federal infrastructure funds based on the Administration's preferences rather than the text or clear intent of the IIJA, the Administration is abusing executive branch power in how it implements one of the most substantial pieces of legislation that this session of Congress will pass.

*Circumventing Rulemaking Processes***.** Informal "guidance" documents issued by executive agencies are a way to circumvent the usual process of rulemaking and can be effective by virtue of an implied threat: Do what the Administration wants or risk losing funding. Notable examples of this practice include the Equal Employment Opportunity Commission trying to limit employers from asking about criminal history in job applications[48] and the Department of Education doing tremendous damage to due process rights for college students.[49]

Maintenance or Expansion? The most contentious aspect of the memo involves the Administration's preference for using highway funds on maintaining or improving existing highway infrastructure rather than expanding highway infrastructure. This approach, often referred to as "fix it first,"[50] would represent a significant change in federal policy—and is deliberately not present in the text of the IIJA.[51]

Federal infrastructure funds have tended to focus on building new assets, while maintenance costs are primarily borne by state and local governments.[52] This approach can lead to over-building, as state and local governments are incentivized to seek "free" federal funds for infrastructure projects that might not pass muster with local taxpayers.[53] However, there is need for infrastructure expansion in many states and regions experiencing rapid growth, and the federal government can easily swing too far in the other direction with a blanket de-prioritization of new highway assets.[54]

Pressuring States. Senators Mitch McConnell (R–KY) and Shelley Moore Capito (R–WV) responded to the Biden memo with a letter to all governors that pointedly referenced the differences between the memo and the text of the IIJA.[55] Similarly, a group of 16 sitting governors sent a letter to President Biden criticizing the implementation of the IIJA, specifically citing the guidance in the memo.[56]

In response to this criticism, Secretary Buttigieg sought to downplay the importance of the memo with a letter[57] and with in-person statements during a hearing on the implementation of the IIJA convened by the Senate Committee on Environment and Public Works.[58] Buttigieg's defense—that the memo was not a hard directive or mandate—does not alter the fact that the memo clearly puts pressure to follow the Biden Administration's non-statutory approach if states want easy access to billions in formula funding.

During the hearing, Senator Capito noted that key language in the memo was consistent with text from an infrastructure bill authored by Representative Peter DeFazio (D–OR), even though the DeFazio bill did not pass.[59] Committee Chairman Tom Carper (D–DE) and Secretary Buttigieg claimed that the memo merely supported a long-standing goal of ensuring proper highway maintenance.[60] This ignores that the memo's importance stems from telling states that they should prioritize highway maintenance over expansion—as opposed to neutrally presenting both as options.

The debate over how to weigh infrastructure expansion and maintenance at the federal level has not yet been settled, which is why the IIJA did not make changes in that regard. This, in turn, is why the Biden Administration's memo is so inappropriate. The FHA does not have the power to prioritize maintenance and improvement over expansion because Congress did not grant that power. Overreaching guidance memos are just one of many examples of executive branch abuses, which have become an increasingly disturbing trend in American governance.[61]

All branches of government should seek to limit executive agencies to their statutory boundaries and prevent abuses such as legislating-by-memo.

Big Handouts for Big Labor

The federal government has a tradition of lavishing favors on labor unions, especially when it comes to infrastructure. One prominent example is the Davis–Bacon Act of 1931. Originally enacted to preclude non-unionized black and immigrant workers from receiving jobs on federal construction projects, the law remains on the books today, ostensibly to ensure market or "prevailing" wages on federal construction projects.[62] In reality, the wages and compensation packages mandated by Davis–Bacon almost exclusively represent select union compensation and result in federal taxpayers paying multi-billion-dollar premiums on construction projects.[63]

Davis–Bacon and PLAs. Section 41101 of the IIJA specified that Davis–Bacon rules apply to new funding for energy-related projects, demonstrating that Congress is not passive on the issue. Yet even this was insufficient for the Biden Administration, which has repeatedly and emphatically pledged support for labor unions. President Biden issued an executive order on February 4, 2022, mandating project labor agreements (PLAs) on federally funded projects of $35 million or more.[64] This updated an order issued during the Obama Administration.[65]

While Davis–Bacon micromanages pay rates, PLAs micromanage work rules by requiring collective bargaining agreements. This means taking authority away from construction companies to perform jobs as they know best and instead granting monopoly power over employees to union officials—including forcing workers to pay union dues. In every aspect, PLAs serve only to increase the cost of projects and reduce the value that taxpayers receive from the spending while discriminating against workers and companies that do not want to unionize and increasing funding for the politicians and political causes that unions support.[66]

The 2009 Obama executive order encouraged, but did not mandate, PLAs. Due to the amount of inefficiency that PLAs produce, federal agencies have chosen to use PLAs on less than 0.7 percent of eligible projects since Obama's order was issued.[67] Biden's mandated use of PLAs will be particularly burdensome amid vastly increased federal construction spending, a nationwide labor shortage,[68] and a very limited pool of unionized construction workers (just 12.6 percent of construction workers in 2021).[69] A group of 42 Senate Republicans sent a letter to Biden opposing the executive order, citing many of these concerns.[70]

*Labor Compensation***.** Labor unions also benefit from the IIJA's big increase in funding for mass transit. The largest transit agencies, which represent the overwhelming majority of transit usage and spending, are uniformly unionized. The complex subsidization of mass transit in the United States—and the political incentives for urban area officials to gain votes and campaign contributions by pandering to transit workers using taxpayer dollars—lead inexorably to exorbitant compensation for transit workers.[71]

In addition, Section 13c of the Urban Mass Transportation Act of 1964[72] makes it difficult for responsible state and local officials to rein in excessive pay and benefits for transit workers. This rule, as written and intended, provides that a transit agency must allow collective bargaining to be eligible for federal subsidies. Since every transit agency in the country is dependent on federal formula funds from the Mass Transit Account of the Highway Trust Fund, an adverse ruling relating to Section 13c would be crippling to the affected transit agencies.

The provision was based on a unique historical circumstance of governments absorbing then-private transit lines and was meant to ensure that the unionized private workers were not disadvantaged by the transition. That scenario is completely divorced from current conditions, meaning the rule is obsolete.[73]

However, the Department of Labor under multiple Administrations has twisted Section 13c to mean that any reduction in transit worker compensation is a statutory violation that would result in the loss of federal transit formula funds.[74] The Biden Administration has used Section 13c to defend transit unions against a California initiative to modestly rein in bloated and insolvent pension plans.[75] Labor costs represent the bulk of operational expenses for transit agencies, meaning this is a significant problem that will be exacerbated by the additional transit funding in the IIJA.[76]

As private sector unionization continues a long decline in the United States,[77] unionization has increasingly become an issue of political capture and cronyism rather than a reflection of workers' desires. While some state governments impose forced-unionization laws that prevent workers from having a choice, 27 states have "right-to-work" rules that prevent workers from being forced to join unions as a condition of their employment.[78] These state laws are displaced by federal labor mandates when an infrastructure project receives federal support. Congress should respect the wishes of workers, employers, and state governments that prioritize choice, efficiency, and innovation over politically motivated, costly, one-size-fits-all labor mandates.

Recommendations

Congress has a variety of ways to substantially improve America's infrastructure policy and address the problems that plague the IIJA. While legislators have a habit of reserving action for when programs require re-authorization, that is no excuse for allowing flaws in the IIJA (or the Administration's implementation of the law) to fester until 2026 or beyond. Instead, Congress should:

- **De-centralize Control Over Surface Transportation Infrastructure.** The vast majority of road assets are owned by state or local governments, and state governments already build and maintain interstate highways. Federal involvement necessarily means additional regulation and bureaucracy. From cost-increasing red tape to wasteful spending diversions to promoting the misguided goals of progressive activists, the public pays a steep price for the sake of continuing an outdated political convenience. Dramatically reducing federal surface transportation spending and the federal gas tax, and providing states with more power over raising revenue would produce tremendous benefit by delivering needed projects faster and more affordably.[79] Members of both parties should have more confidence in their state governments than in the federal leviathan.

- **Focus the HTF on Freeways and Eliminate Programs That Subsidize Local Infrastructure.** While the HTF was created for the purpose of enabling a national highway grid, it has increasingly become a slush fund for state and local infrastructure. Non-interstate diversions such as bike paths, streetcars, mass transit, and ferries consumed over one-quarter of the HTF prior to the IIJA,[80] and the law has further increased the number of miscellaneous surface transportation programs. The HTF faces a long-term structural deficit that would be mostly (but not entirely) closed by eliminating diversions. Ending funding for these diversions would make it easier to align remaining spending with revenues.[81] This would also streamline highway reauthorization bills, allowing for more focus on improving the interstate system.

- **Leave Safety Decisions to State and Local Governments.** In conjunction with focusing the federal role on freeways, the federal government should allow states and localities to decide what works best for them when it comes to improving safety. Subsidies for sidewalks, bike lanes, and road diets are far outside the proper role of the federal government.

- **Actively Fight Executive Branch Overreach.** Both parties tend to complain about the issue only when the other side occupies the White House, which has turned a genuine constitutional problem into just another partisan football. Worse, many Members of Congress openly encourage overreach,[82] which exemplifies an ends-justify-the-means mindset that is ruinous for America's core institutions. Congress should use all tools at their disposal to address the subversion of infrastructure laws, including oversight,[83] coordination with adversely affected states,[84] and (where appropriate) legal action.

- **Eliminate and Prevent Wasteful Carve-Outs for Unions.** This would include repealing the Davis–Bacon Act, repealing or reforming Section 13c of the Urban Mass Transportation Act of 1964, banning PLA mandates on federal infrastructure projects, and eliminating or significantly reducing mass transit subsidies that enable outsized compensation for transit labor unions.

Conclusion

Members of Congress broadly agree that improving the nation's roads and bridges would benefit the American public. The best way to do so is not by putting Washington in charge but instead by having Uncle Sam take a back seat.

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