

Challenges to Joe Biden's Presidency: COVID-19 and Pandemic Emergency

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Abstract: Sfide alla presidenza di Joe Biden: il COVID-19 e l'emergenza pandemica. – The article addresses the strategies adopted by the Biden administration to tackle the pandemic emergency, while highlighting the interaction between Presidential actions and the decisions of the Supreme Court in this regard.

Keywords: President Biden; health care; pandemic emergency; OSHA; Supreme Court.

1. Introduction

Joe Biden, as a presidential candidate, sold himself as prepared to address four crises that were roiling American life in 2020. He laid them out clearly: fighting the coronavirus, restoring the economy, combating climate change and making the country more equal. "History has delivered us to one of the most difficult moments America has ever faced," Biden said at the Democratic National Convention in 2020. "Four historic crises, all at the same time. A perfect storm".¹

Biden often repeated the challenge to Covid 19 during the Presidential election campaign² and spoke about this topic in his inaugural speech. has identified COVID-19 response as the highest priority for his Administration's first weeks and months. His initial policy foray is outlined in his Administration's *National Strategy for the COVID-19 Response and Pandemic Preparedness*³ and in 11 executive orders issued on January 20 and January 21, 2021.⁴

The evidence of the damage of the Coronavirus was life expectancy, that, for the first time for two years in a row, fell in the U.S. in 2021. In 2019, a person

¹ See A. Linskey, C.R. Wootson Jr., J. Stein and B. Dennis, *After one year in office, what has Biden done about the four crises he pledged to address?*, in *The Washington Post*, Jan. 20, 2022.

² See L.O. Gostin, et al., *A global health action agenda for the Biden administration*, in *The Lancet*, Dec. 1, 2020, at 1-3.

³ <https://www.whitehouse.gov/wp-content/uploads/2021/01/National-Strategy-for-the-COVID-19-Response-and-Pandemic-Preparedness.pdf>, January 21, 2021.

⁴ See K. Amadeo, *President Biden's Plan for Combating COVID-19. A Coordinated National Plan Based on Science*, in *www.thebalancemoney.com*, September, 2021.

born in the U.S. had a life expectancy of 79 years. In 2020, life-expectancy dropped to 77 years, due to the pandemic, and again it dropped to 76 years in 2021.

Moreover, we need to consider that life expectancy is even lower for some Americans, according to a provisional analysis released by the *Center for Disease Control and Prevention*.⁵ Indeed, the losses in the Native American population have been terrible during the COVID-19 pandemic. This reflects the so many barriers that tribal communities face in getting access to care. Life expectancy for this community is now the same as it was for the whole population in the 1940s. To see the decline over the two-year period for this population was 6.6 years was jarring. Despite a high vaccine uptake in this community, American Indians are 2.2 times more likely to die from COVID-19 and 3.2 times more likely to be hospitalized for the virus.⁶

2. President Biden's first measures to combat the pandemic

In his inaugural address of January 20 2021, Biden said that “We can overcome this deadly virus”,⁷ the country is grappling with a new, fifth wave of infections and with immense family problems. Hospitals in all States have great difficulty treating patients, medicines to treat covid-19 are not available, but tests are also not available.⁸

The same day of his inaugural speech, Biden signed executive orders mandating mask wearing on federal property, airports and airplanes during domestic and international travel.⁹

Since taking office, Biden has called for an extraordinary whole-of-government effort to provide support nationwide, state and community, to fight COVID-19, get people vaccinated, and end pandemic. The President promised to provide 100 million shots in his first 100 days as President. That goal was achieved by the middle of March 2021, even earlier than what was declared.¹⁰

Moreover, Biden's *American Rescue Plan* provided 160 billion of dollars for vaccine production and distribution, as well as nationwide testing growth. It was used the Stafford Act, a 1988 act that establishes the authority for most federal disaster response activities, to provide emergency assistance to primary and secondary schools¹¹ and for all those who work in

⁵ See E. Arias, B. Tejada-Vera, K. D. Kochanek and F. B. Ahmad, *Provisional Life Expectancy Estimates for 2021*, *Vital Statistics Rapid Release*, Report No. 23, 2022.

⁶ See D. Badger, *COVID-19: Why President Biden's Response Strategy Falls Short*, in *Domestic Policy Studies*, No. 6044, 2021.

⁷ President Joseph R. Biden, Jr., ‘Inaugural Address’, in www.astrid-online.it/static/upload/protected/bide/biden-inaugural-address.pdf, January 20, 2021.

⁸ See A. Linskey, 2022.

⁹ See K. Amadeo, September, 2021.

¹⁰ See *Ibidem*.

¹¹ See *Ibidem*.

the education industry. In addition, it was given robust support to small businesses through a “restart package”, in order to make it safer to continue work in security and to cover the costs of operating safely.

The President made the commitment that all Americans would have access to regular, reliable, and free testing. In an effort to keep that promise, Biden also signed an executive order on January 21 to set up a Pandemic Testing Board to produce and distribute testing on a national scale.

The aim of the Board was to reach out to healthcare professionals and also disadvantaged populations, such as the homeless and people in high risk settings.¹²

In recognition of the disproportionate toll the coronavirus had taken on minorities, Biden established a *Health Equity Task Force*. This Task Force recommended ways to address disparities in the health care system facing communities of color and other underserved populations. The Task Force was convened national experts on health equity and provide recommendations on how to mitigate COVID-19 health inequities.¹³

3. President’s pandemic strategy in the long period

Unlike President Trump, the first innovation was that President Biden’s plan pledges a coordinated federal reaction based on science.

This would provide funding and guidance to help states, cities, companies, and schools in order to respond to the pandemic situation. Moreover, extra support would be addressed to students, small businesses, elderly people, and minorities who were most affected by COVID-19.

The first results of the widespread vaccination were that many people were not hospitalized. As it had happened before vaccination had been spread among the citizens, but they were not free of infections, as previously thought. The early two-shot regimen that most Americans received as immunizations became a three or four-shot ordeal and, maybe, could require even more vaccines.¹⁴

Based on an aggressive strategy, the President ramped up the supply of vaccines so that all people living in the United States could get vaccinated and also dramatically increased the number of places to get vaccinated. Health experts credit the White House for rapidly accelerating the distribution of vaccines, which was proven effective and considerably reduced hospitalizations even if the virus was mutating. However, the possibility that a sizable minority of people would resist taking the vaccines had not been foreseen in the United States, nor in Europe.

The blocked absorption prompted the President to issue a series of mandates in 2021, including a directive to make it mandatory for big companies to require that employees be vaccinated or tested on a regular

¹² Cf *The Biden plan to combat coronavirus (Covid-19) and prepare for future global health threats*, joebiden.com/covid-plan/#.

¹³ <https://www.whitehouse.gov/wp-content/uploads/2021/01/National-Strategy-for-the-COVID-19-Response-and-Pandemic-Preparedness.pdf>, January 21, 2021, p. 19.

¹⁴ See A. Linskey, 2022.

basis. The White House had estimated that this would affect 80 million Americans, but the Supreme Court partially blocked the President's plan.¹⁵

4. The Supreme Court and the President's plan

On January 13, 2022, the Supreme Court issued two significant rulings on the federal government's power to mandate COVID-19 vaccinations. The Court significantly affected the government's ability to address pandemic-related issues, by reducing the President's policy space for initiative and, consequently, significantly affected the authority of federal agencies to issue health and safety regulations.¹⁶

Since several states and businesses challenged OSHA's standard, in *National Federation of Independent Business v Department of Labor*,¹⁷ the Supreme Court, in a 6-3 unsigned *per curiam* opinion, blocked an Occupational Safety and Health Administration (OSHA)¹⁸ emergency temporary standard (ETS) requiring vaccination. This vaccination campaign was subject to adherence to specific religions or impaired by disability and the tests were to be held weekly; moreover, it was mandatory the use of masks in companies with 100 or more employees. The Court ruled that the Occupational Safety and Health Administration¹⁹ did not have the required legislative authority to mandate vaccination or testing and pointed out that such obligation could not be equated to a daily exercise of federal power, but represented, on the contrary, a real invasion into the lives and health of a considerable number of employees.

In *Biden v Missouri*,²⁰ instead, the Court upheld the regulations that established the Centers for Medicare & Medicaid Services (CMS) and made vaccinations of health care workers mandatory, maintaining the same conditions in relation to religious orientations or impaired by disability.²¹

In general, the Court did not consider COVID-19 an occupational hazard in most workplaces because the SARS-CoV-2 virus could be transmitted throughout society and vaccination could not be undone at the end of the working day.

¹⁵ *Ibidem*.

¹⁶ Cf. L. O. Gostin, W. E. Parmet and S. Rosenbaum, *The US Supreme Court's Rulings on Large Business and Health Care Worker Vaccine Mandates Ramifications for the COVID-19. Response and the Future of Federal Public Health Protection*, jamanetwork.com/ on 11/24/2022.

¹⁷ *National Federation of Independent Business v. Department of Labor, Occupational Safety and Health Administration*, 1595 US, No. 21A244 (January 13, 2022).

¹⁸ *Occupational Safety and Health, Standards*, 29 USC §655.

¹⁹ On the OSHA, Cf. D. Michaels and G.R. Wagner, *Occupational Safety and Health Administration (OSHA) and Worker Safety During the COVID-19 Pandemic*, in 324 *JAMA* 14, 1389-1390 (2020).

²⁰ *Biden v. Missouri*, 595 US, No. 21A240 (January 13, 2022).

²¹ CMS. Interim Final Rule with comment period, "Medicare and Medicaid Programs; Omnibus COVID-19 Health Care Staff Vaccination." *Fed Reg.* 2021; 86: 61555.

In particular, the OSH Act did not and, currently, does not specify that risks must be primarily or exclusively related to workplaces. Furthermore, workers run a greater risk because they spend quite long periods of their day in crowded indoor environments where they often fail to protect themselves.

On November 5, 2021, the Centers for Medicare & Medicaid Services (CMS) issued a final interim rule prior to the Supreme Court ruling, requiring staff working in Medicare or Medicaid certified facilities to be fully vaccinated against COVID-19, always maintaining the exemption for religious or medical reasons. The Court, in this case, deemed the law legitimate even though it involved around 10 million health workers, allowing CMS to enforce the law nationwide.

The Court found that CMSs had broad powers to affect facilities' participation in Medicare and Medicaid and could establish requirements as necessary for patient health and safety. Indeed, CMS has a long tradition of setting health and safety standards for participating facilities, including the qualifications and duties of healthcare workers and infection control protocols.²²

However, while CMS has never mandated a vaccine before, this new power was justified by an unprecedented health emergency.

The different and conflicting views were evident in the ruling of the OSHA case. In fact, the conservative Justices, Gorsuch, Thomas and Alito, expressed a concurring opinion, highlighting that Federalism and the separation of powers protect the "liberties of millions of Americans". They also point out that states and Congress, not OSHA, have the authority to decide how to respond to the pandemic.

Conversely, in their dissenting opinion Justices Breyer, Sotomayor and Kagan pointed out that the majority decision hindered "the Federal Government's ability to counter unparalleled" threats. They argue that the pandemic directly affects workplace safety and therefore that OSHA has the authority to issue regulations to curb the effects of the pandemic in the workplace.²³

By limiting the federal government's ability to effectively protect public health, the Supreme Court acquired an enormous role in formulating federal health policy, with significant consequences that will extend long into the future, even after the pandemic will be over.

It is also worth pointing out that the prevention of healthcare-acquired infections is consistent with a fundamental principle of medical ethics, respected not only in the United States: 'first, do no harm'. The Court indicated that it would be the exact "opposite of efficient and effective administration for a facility that is supposed to make people feel good to make them sick with COVID-19".

In addition to the Supreme Court overturning Biden's effective vaccination mandate, through one of the two sentences, the Republican Governors of some states, the most conservative ones, blocked the

²² Cf www.cms.gov/

²³ See *National Federation of Independent Business v. Department of Labor, Occupational Safety and Health Administration*, Oyez, www.oyez.org/cases/2021/21A244.

obligation to wear a mask, weakening or even removing a highly effective tool for controlling viral spread.

Misinformation about covid and vaccines widely spread on social media, with little opposition from tech companies, able to adequately debunk fake news. These platforms have become breeding grounds for unfounded concerns about vaccine uptake and have amplified wrong information.²⁴

The result was that, despite the strong vaccination campaign and the obligation to wear a mask in some States, more than a million Americans died from Covid.²⁵

5. Conclusion

Recently, on September 15, 2022, in an interview with the CBS program ‘60 Minutes’, President Biden said that the pandemic situation is improving very fast and with a progression that has not been seen since the beginning of the pandemic. He added that it is necessary to continue working hard to keep the virus under control. Moreover, and perhaps due to the proximity of the midterm elections, he concluded that the US Government is continuing to make huge efforts to fight the virus, but, overall, it can be said that “the pandemic in the US is over”.²⁶

Immediately after the interview, the following week, the head of the World Health Organization (WHO) said that the end of the pandemic was “in sight”, essentially contradicting President Biden’s claims. Few days later officials of the Biden administration reiterated to US media that the comments on the pandemic situation did not signal a change in policy and that there were no plans to end the current Covid-19 public health emergency. The pandemic should not be thought to be over, and therefore continued national efforts to ensure health are currently far from complete.²⁷

In any case, last month, on October 18, 2022, the Biden administration unveiled a new national biodefense strategy, aiming to address the lessons learned from the massive response to the COVID-19 pandemic and to prepare the country to future public health emergencies.

The most important lesson to be learned from Covid-19 is that the reaction to pandemic threats must be very immediate and the public administration, not only in the health sector, must be able to move much more quickly, if it wants to be prepared to counter completely unknown threats. Consistent with these premises, President Biden has asked Congress to allocate 88 billion of dollars over five years to increase the degree of preparedness for pandemic emergencies.

²⁴ See Linskey, 2022.

²⁵ Statistics on Covid-19 data around the world are continuously updated by the Center for Systems Science and Engineering (CSSE) at Johns Hopkins University (JHU), coronavirus.jhu.edu/map.html.

²⁶ See, B. Debusmann Jr, *Covid-19 pandemic is over in the US*, in *BBC News*, 20 September 2022.

²⁷ See, *Ibidem*.

The new biodefense strategy involves recruiting, training and supporting new public health personnel, including laboratory technicians, veterinarians and community health workers, not only to better detect emerging diseases, but also to be able to tackle these diseases faster and more effectively. The new staff is needed because public health departments in the United States have long reported that they are overworked.²⁸

Biden also broadened his horizons beyond the United States and said the goal is not only to build such a significant ‘public health army’ within the country, but there must be a commitment to help at least fifty Countries to strengthen their local capacities, since pandemic emergencies cannot be tackled with contrast in a single Country.

In accordance with these objectives, the administration’s plan must be able to deal with all biological threats and epidemics, “whether natural, deliberate or accidental”,²⁹ and, certainly, these specific goals are not reassuring for the future.

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²⁸ Cf. A. Joseph, *In new White House plan, Biden administration outlines ambitious strategy to prevent and prepare for pandemics*, www.statnews.com/ 2022/10/18/.

²⁹ See A. Joseph, 2022.

