

Biden's Administrative State

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Abstract: *Lo Stato Amministrativo di Biden* - The Biden Administration has approached the concept and the structure of the administrative state with a comprehensive vision for governance that contrasts significantly with its predecessors. The emphasis on regulatory reform, executive actions, and a strong commitment to progressive social policies marks an era of intervention in various areas, from climate change to public health. This paper provides an overview of the key areas in which the Biden administration has exerted influence and highlights the administration's vision for an expanded and responsive federal government.

Keywords: Biden Presidency; Administrative state; Climate policy; Health policy; Social and economic equity initiatives

1. Introduction

Since assuming office in January 2021, President Joe Biden has positioned the federal administration within the context of an ambitious agenda, seeking to utilize the power of the government to address pressing national challenges. This agenda represents a resurgence of the administrative State, particularly through a proactive approach to regulation and a strategic increase in executive actions. Biden considered the administrative state as a vital part of America's constitutional democracy and, consistent with that concept, his Presidency has instituted some reforms that should have brought the administrative state even closer to its full democratic potential.¹

Unlike previous administration, Biden's strategy is a response to the urgency of issues such as climate change, economic inequality, and public health crises. The goals of the administration reveal a distinct philosophy towards government intervention, designed to promote equity and sustainability. The administrative state in the United States has evolved over centuries, with each administration influencing its reach and scope and, under President Biden, the federal administration has taken on a new shape, characterized by a heightened focus on intervention in crucial areas.²

¹ See D.E. Walters, *The Administrative Agon: A Democratic Theory for a Conflictual Regulatory State*, in 132 *Yale L. J.* 1 (2022).

² See V. De Falco, *Agency rulemaking under the Biden Administration*, in *DPCE online*, Special issues, *The American Presidency after two years of President Biden*, 2023, 85-96.

In a period marked by legislative gridlock, Biden's reliance on executive action and regulatory agency power has drawn both praise and criticism, raising questions about the boundaries of executive authority.

President Biden has extensively relied on executive orders as a swift means to implement policy changes in a polarized Congress. His initial executive actions reversed or modified policies established by the previous administration on climate change, labor laws, and immigration.

For instance, on his first day in office, Biden rejoined the Paris Climate Agreement, signaling a fundamental shift in the climate policy of the United States.³ This approach underscores a distinctive commitment to regulatory intervention to address complex social and environmental challenges.

This use of executive orders, however, has sparked debates on the extent of executive power and the implications of administrative reach, as they can bypass traditional legislative processes. Critics argue that reliance on executive orders lacks durability, as these orders are vulnerable to reversal by subsequent administrations, illustrating a structural fragility within the administrative state.

2. Climate Policy as a Priority of the Administrative State

One of the most significant areas of action has been climate policy. The Biden administration's emphasis on climate policy reflects a renewed application of administrative power through agencies like the Environmental Protection Agency (EPA). Some Biden's executive orders have been issued to reinstate regulations on greenhouse gas emissions and other environmental protections weakened during the previous administration. The proposed "Build Back Better" framework includes ambitious climate provisions, calling for investments in green energy, clean transportation, and sustainable infrastructure development. The EPA, empowered with regulatory autonomy, has proposed rules to reduce greenhouse gas emissions and restrict fossil fuel usage, directly addressing the Biden's commitment to combat climate change.

While proponents view these policies as essential to mitigating environmental risks, opponents question the economic impact and the overreach of federal agencies. The Supreme Court, in cases like *West Virginia v. EPA*,⁴ restricted the EPA's ability to regulate emissions without clear congressional authority, highlighting the tension between executive action and judicial oversight and has shown increasing skepticism of expansive agency authority in regulating environmental issues, citing constitutional limits to administrative power. The role of agencies such as the EPA and the Department of Energy is central to these efforts. These agencies are not only focusing on emissions regulations but are also addressing environmental injustices that affect disproportionately marginalized communities.

This shift towards a regulatory state focused on environmental sustainability is seen by supporters as a necessary adaptation to address

³ J. Biden, *Executive Order on Tackling the Climate Crisis at Home and Abroad*, The White House, Jan. 27, 2021.

⁴ *West Virginia v. Environmental Protection Agency*, 597 U.S. 697 (2022).

climate risks. However, it faces opposition from political and industry groups who argue that the increased regulations could hamper economic growth and infringe on state sovereignty.

The climate agenda represents a renewed commitment to the administrative state's role in tackling large-scale problems that transcend state boundaries, underscoring the Biden administration's view of federal agencies as essential actors in achieving environmental reform.

3. Health Policy and Federal Agency Response to COVID-19

Biden often repeated the challenge to Covid 19 during the Presidential election campaign⁵ and spoke about this topic in his inaugural speech. He 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*⁶ and in eleven executive orders issued on January 20 and January 21, 2021.⁷ Unlike the former President Trump, the first innovation was that President Biden's plan pledges a coordinated federal reaction based on scientific data. This provided funding and guidance to help states, cities, companies and schools to respond to the pandemic situation.

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.⁸ Since several states and businesses challenged OSHA's standard, in *National Federation of Independent Business v Department of Labor*,⁹ the Supreme Court blocked an Occupational Safety and Health Administration (OSHA)¹⁰ 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

⁵ See L.O. Gostin *et al.*, *A Global Health Action Agenda for the Biden Administration*, in 397 *The Lancet* 5-8 (2021).

⁶ <https://www.whitehouse.gov/wp-content/uploads/2021/01/National-Strategy-for-the-COVID-19-Response-and-Pandemic-Preparedness.pdf>, January 21, 2021.

⁷ See K. Amadeo, *President Biden's Plan for Combating COVID-19. A Coordinated National Plan Based on Science*, in *www.thebalancemoney.com*, September 2021.

⁸ See L.O. Gostin, W.E. Parmet, 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*, in *jamanetwork.com*, November 24, 2022.

⁹ *National Federation of Independent Business v. Department of Labor, Occupational Safety and Health Administration*, 595 U.S. ____ (2022).

¹⁰ *Occupational Safety and Health, Standards*, 29 USC §655.

Health Administration¹¹ 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*,¹² 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.¹³

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.

Afterwards, 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 Biden administration has defended its actions as essential to safeguarding public health, demonstrating an expansive view of the administrative state's role in managing nationwide crises.

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.

For example, 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.¹⁴ Biden also broadened his horizons beyond the United States and said the goal is not only to build such a significant 'public health army' through federal agencies 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.

4. Social and Economic Equity Initiatives

¹¹ On the OSHA, see D. Michaels, G.R. Wagner, *Occupational Safety and Health Administration (OSHA) and Worker Safety During the COVID-19 Pandemic*, in 324(14) *JAMA* 1371 (2020).

¹² *Biden v. Missouri*, 595 U.S. 87 (2022).

¹³ CMS. Interim Final Rule with comment period, *Medicare and Medicaid Programs; Omnibus COVID-19 Health Care Staff Vaccination*, in 86 *Fed. Reg.* 6155 (2021).

¹⁴ See A. Joseph, *In new White House Plan, Biden Administration Outlines Ambitious Strategy to Prevent and Prepare for Pandemics*, www.statnews.com, October 18, 2022.

Social and economic equity is a core pillar of the Biden administration's agenda and there have been various initiatives to reduce racial disparities, expand labor protections, and implement student debt relief. The Department of Education has sought to forgive substantial portions of federal student loan debt, while the Department of Labor has worked to increase minimum wage standards for federal contractors and improve workplace protections.

The Biden administration's focus on reducing racial disparities and expanding labor protections represents a critical shift toward a more inclusive and equitable society. While challenges remain, particularly in political opposition, the administration's efforts to address systemic inequality reflect a determined commitment to creating a fairer economy and society for marginalized groups and working Americans. To address racial disparities, the administration has launched several initiatives designed to enhance economic equity. The *Executive Order on Advancing Racial Equity and Support for Underserved Communities*¹⁵ directs federal agencies to assess and promote policies that foster equity across additional key areas, including education, healthcare, and economic opportunity.

In addition, to addressing racial disparities, the administration has introduced labor reforms that seek to elevate protections for American workers, particularly those in low-wage sectors. The *Raise the Wage Act*, a proposed legislative priority of the administration, advocates for a \$15 federal minimum wage, which could raise earnings for millions of workers, with a pronounced effect on minority populations who are overrepresented in lower-wage jobs. Although this bill has faced resistance in Congress, Biden issued an executive order raising the minimum wage for federal contractors to \$15 per hour, impacting hundreds of thousands of workers.¹⁶

The Biden administration's focus on reducing racial disparities and expanding labor protections reflects also a renewed commitment to addressing inequality in the American labor market. While some initiatives have encountered resistance, executive actions and agency-driven reforms have brought meaningful change to minority communities and low-wage workers. Moving forward, these efforts highlight the role of the federal government in pursuing a more just and equitable economy for all Americans.

However, such initiatives have met significant resistance from critics who argue that expanded social policies contribute to federal overreach and rising government expenditures. Economic equity measures, such as increased minimum wages for federal employees, have garnered strong opposition from conservative groups who see them as regulatory burdens on businesses. This contention highlights the challenges Biden faces in redefining the role of federal agencies within the administrative state.

¹⁵ J. Biden, *Executive Order on Advancing Racial Equity and Support for Underserved Communities*, The White House, January 20, 2021.

¹⁶ J. Biden, *Executive Order to Raise the Minimum Wage to \$15 for Federal Contractors*, The White House, April 27, 2021.

5. Judicial Challenges and Constitutional Implications

The Biden administration's reliance on the administrative state has inevitably led to judicial challenges that question the scope of executive power. Cases such as *West Virginia v. EPA* have brought attention to the constitutional boundaries of agency actions and the interpretation of statutory authority. The Supreme Court, with a conservative majority, has signaled skepticism towards expansive agency authority, which could limit the Biden administration's ability to enact its agenda through regulatory means.

Recently, the Court overruled the principle of *Chevron* deference in *Loper Bright v. Raimondo*,¹⁷ modifying a principle that has been a foundational doctrine in administrative law. The legal doctrine of *Chevron* deference, which allows courts to defer to agency interpretations of statutes, is under renewed scrutiny. The potential erosion of *Chevron* deference has restricted the Biden administration's regulatory authority, leading to increased judicial intervention in administrative decisions. These developments underscore the tension between the executive and judicial branches over the role of the administrative state in American governance.

The judicial decisions reveal a growing resistance to expansive agency power and highlight an emerging limitation on executive reach. The tension between the judicial and executive branches underscores the complexity of enacting substantive policy changes through administrative means, particularly in a polarized political environment. This change could significantly impact on the scope of agency authority, constraining Biden's ability to pursue an expansive agenda through regulatory agencies.

This judicial trend reflects a broader ideological shift in constitutional interpretation, with potential long-term implications for federal administrative power. Such initiatives illustrate the administration's commitment to using federal agency powers to promote equity, but they face considerable resistance from those who see these policies as economically disruptive and prone to federal overreach.

6. Conclusion

The Biden administration's approach to the administrative state represents a proactive and expansive vision of federal governance. By leveraging regulatory agencies and executive orders, the administration has sought to address complex social, economic, and environmental challenges. However, this approach faces significant obstacles, both from political opposition and

¹⁷ *Loper Bright Enterprises et al. v. Raimondo*, 603 U.S. ____ (2024). For a valuable analysis of the sentence, see G.F. Ferrari, *Loper Bright: cronaca di una morte annunciata?* in *DPCE online*, 3/2024, 2115-2130 and G.Romeo, *Statutory stare decisis e tenuta del precedente wrongly decided: una lettura di Loper Bright Enterprises v. Raimondo*, *ivi*, 2131-2144. For a related discussion of the sentence, see also C.H. Walker, *What Loper Bright Enterprises v. Raimondo Means for the Future of Chevron Deference*, in *Yale J. Regulation*, June 28, 2024, and N.D. Bamberger et al., *After Chevron: What the Supreme Court's Loper Bright Decision Changed, And What It Didn't*, in *Harvard Law School Forum on Corporate Governance*, July 18, 2024.

judicial scrutiny, raising important questions about the limits of executive power and the future of the administrative state.

In an increasingly polarized political landscape,¹⁸ the Biden administration's reliance on the administrative state highlights the role of federal agencies as key instruments for implementing policy in the face of legislative gridlock. However, the long-term effectiveness of this approach remains uncertain, as judicial limitations and shifting political dynamics continue to shape the trajectory of the administrative state in the United States. The Biden administration's experience will likely serve as a pivotal case study in the ongoing debate over the role of the federal government in regulating and reforming the American society.

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¹⁸ S. Farhang, *Legislative Capacity and Administrative Power Under Divided Polarization*, in 150(3) *Daedalus* 49 (2021).

