

Biden’s Regulatory “Modernization” Expanding Government Affirms the Unworkability of Administrative State Rule

Where recent editions of *Ten Thousand Commandments* began by surveying of approaches the Trump administration took to streamline red tape as well as of Trump’s own moves undermining that goal, this 2022 edition showcases Biden’s reversal and return to activist government (see Box 2).⁹³

Biden’s Repudiation of the Trump Streamlining Agenda

Even during the four years of the Trump administration, the limitations of solo executive branch streamlining, despite being prioritized, were apparent. The former president’s “one-in, two-out” Executive Or-

der 13771⁹⁴ met a resistant career bureaucracy. Agencies and progressive advocacy groups got their wish with the arrival of Biden. Whereas Trump’s infamous one-in, two-out executive order appeared a week after his inauguration, dozens of new directives were prepared in advance and issued during Biden’s first week (see Box 1).

Biden’s first acts included a presidential memorandum repudiating the Trump agenda. The January 20, 2021 “Modernizing Regulatory Review” directive dispenses not only with Trump’s “harmful” programs but also with the historical approach of review and oversight by the White House Office of Information and Regulatory Affairs (OIRA).⁹⁵ These

Box 2. Biden’s Expansion of Federal Government Economic and Social Controls

- Repudiation of the Trump streamlining agenda
 - “Whole-of-government equity”: spending, regulatory interventions and sub-regulatory guidance to advance an “equity” agenda characterized by differential treatment under law based on group membership
 - Erosion of public disclosure of regulations and guidance documents
 - “Whole-of-government” climate and environmental activism at an economy-transforming scale that threatens access to energy, fused with equity, “competition,” and “Build Back Better” agendas
 - “Competition policy,” consisting of antitrust and other regulation, covering areas from agriculture to high tech. Similar prior interventions aggravated business uncertainty and supply disruptions, increased consumer prices, and undermined wealth creation
 - Industrial policy efforts and distortionary large-scale infrastructure spending and subsidies with broad regulatory effect, in areas from routine infrastructure to frontier sectors like next-generation networks of vehicle charging stations, artificial intelligence, and basic science investment
 - Pandemic health mandates that both cost business and suppress voicing of dissenting opinions on private online platforms
 - Pandemic-induced escalation of surveillance
 - Inflation Reduction Act and attendant regulation and sub-regulatory dark matter
- There is ample debate over the administrative state regarding how to make things work better. This pursuit is increasingly unhelpful as the central government assumes more power. The administrative state needs fundamental challenge, and Congress’ own power needs bounds. This discussion is offered in the spirit of reforms to consider at the congressional level and the lessons they may entail for a future reform-minded administration.

were replaced with the pursuit of benefits as so deemed by progressive appointees, resulting in an implicit repudiation of even Clinton-era Executive Order 12866's prior art of ensuring that benefits "justify" costs before regulating.

"Modernizing Regulatory Review" instructs the Director of OMB, in consultation with departments and agencies, to develop

... a set of recommendations for improving and modernizing regulatory review. These recommendations should provide concrete suggestions on how the regulatory review process can promote public health and safety, economic growth, social welfare, racial justice, environmental stewardship, human dignity, equity, and the interests of future generations.⁹⁶

It also revised OMB's review process to "fully account ... for regulatory benefits that are difficult or impossible to quantify, and [avoid] harmful anti-regulatory or deregulatory effects." The memo not only has no mention of regulatory costs, but also calls for regulatory review that "serves as a tool to affirmatively promote regulations" and for regulators to "consider ways that OIRA can play a more proactive role in partnering with agencies to explore, promote, and undertake regulatory initiatives that are likely to yield significant benefits."⁹⁷

That means that rather than act as a watchdog (albeit never having been that strong of one), OIRA is to help write and lobby for new regulations. The question of whether or not to regulate is posed such that the answer will always be in the affirmative. Agencies are being unleashed to issue guidance, memoranda, notices, circulars, bulletins, letters, interpretations, and so on.

In contrast, under Trump, agencies like the Federal Communications Commission (FCC), Environmental Protection Agency (EPA), and Consumer Financial Protection Bureau were led by pro-liberalization appointees. The entire executive branch at one

point operated under an instruction from then-OMB director Mick Mulvaney that deregulation should be their "highest priority," but the permanent bureaucracies were biding their time.⁹⁸ In the blink of a political eye, that same OMB affirmed in the spring 2021 Regulatory Agenda that the highest priority is "to build back better and more equitably."⁹⁹ With Biden, the twice-yearly "Unified Agenda of Federal Regulatory and Deregulatory Actions"¹⁰⁰ takes a leap backward in oversight and a leap forward in activist central government, with OIRA pointedly digging at the prior administration:

[T]he Unified Regulatory Agenda continues rolling back the obstacles to recovery, equity, and sustainability that the prior Administration put in place. ... The last four years offered a clear lesson on what happens when the Executive Branch fails to uphold its responsibility to protect the American people.¹⁰¹

The same sentiments were echoed in the fall 2021 Agenda, which further delivered on Biden's call for mobilization and shifting of gears to activism.¹⁰² In announcing the fall 2021 "Regulatory Plan and Unified Agenda" in December, OMB proclaimed its engagement in reinforcing regulation. It titled the statement accompanying the release "A Regulatory Plan to Continue Building Back Better," avowing: "This Administration is using every lever at its disposal—including regulatory action—to deliver on the President's priorities, including containing the pandemic, driving a durable economic recovery, advancing equity, and combating climate change."¹⁰³

Similar language was contained in the Fall 2021 Regulatory Plan: "Between this regulatory agenda and the next one in spring 2022, agencies will also be developing plans for implementing the Infrastructure Investment and Jobs Act (IIJA), historic legislation to rebuild crumbling infrastructure, create good paying jobs, and grow our economy."¹⁰⁴

The introduction to the fall Agenda further captured the shift to an equity agenda

activism: “We are proud to shine a light on the regulatory agenda as a way to share with the public how the themes of equity, prosperity and public health cut across everything we do.”¹⁰⁵

Regulatory plans have always contained agency boasts and slippery goals that tend in the direction of more government, but the aggressiveness and disdain of other views is new. The seeds for what is happening now were sown with the replacement of the regulatory review stipulation in Reagan’s E.O. 12291¹⁰⁶ that potential benefits “outweigh” potential costs, with that in Clinton’s E.O. 12866 that regulatory benefits that “justify” costs.

There is a certain futility to streamlining efforts centered at the executive branch. The administrative state’s lack of accountability, incompatibility with limited government, and bias toward government growth is apparent in the rulemaking process itself.

The 1946 Administrative Procedure Act requires adherence to a public notice-and-comment process for issuing a new rule, but also for rolling back rules. However, the act also allows latitude to expand regulation via a “good cause” exemption when agencies deem notice and comment to be “impracticable, unnecessary, or contrary to the public interest.”¹⁰⁷ Agencies are fond of using good cause, but primarily to add, not subtract. Meanwhile, Trump’s attempts at recodification of some rules, such as the Waters of the United States¹⁰⁸ and Clean Power Plan rules,¹⁰⁹ or even the creation of a new, better-working product class for dishwashers¹¹⁰ were years-long endeavors that are being undone by the Biden administration. Furthermore, under the judicial philosophy of *Chevron* deference, courts typically yield to agencies’ “rational basis” interpretations of the enabling statutes under which they write their rules.”¹¹¹

Corporations, too, pursue or get enticed by subsidies and regulations that hobble competitors, but also indicate in some instances that they never wanted regulatory

reductions in the first place.¹¹² Among these latter one finds, for example, an embrace of the rent-seeking environmental, social, and governance (ESG) agenda.¹¹³ Following are a few additional ways Biden has reversed some instances of Trump’s regulatory streamlining.

Elimination of Streamlining via the Congressional Review Act. Biden got help from the Democratic Congress in overturning three of Trump’s already enacted streamlining rules using the Congressional Review Act.¹¹⁴ This law enables Congress to reach back to rules 60 legislative days old, and has been used only 17 times since its 1996 passage. The 2021 overturns involved a “true lender” rule involving national banks and savings associations (S.J. Res. 15) from the Comptroller of the Currency,¹¹⁵ an Equal Employment Opportunity Commission rule related to the commission’s conciliation procedures (S.J. Res. 13); and a methane rule from the Environmental Protection Agency (S.J. Res 14).

COVID-19 Relief Overturned. Trump’s Executive Order 13924 on “Regulatory Relief to Support Economic Recovery,” which enabled limited use of emergency powers to aid COVID-19 relief and economic recovery was revoked in February 2021.¹¹⁶ The idea then had been to extend the already underway medical crisis regulatory relaxation approach, and apply it to relieving the economic crisis response more generally. This approach aimed at making some temporary regulatory suspensions permanent.¹¹⁷ E.O. 13924 suspended penalties, eased permitting, and allowed regulatory leniency for businesses exhibiting “good faith” compliance efforts.¹¹⁸ Also withdrawn were the Food and Drug Administration’s (FDA) pre-market notification exemptions for certain classes of medical devices that were relaxed during the pandemic.¹¹⁹ The economic relief order Biden did issue consisted not of business relief but of easing access to government relief spending programs.¹²⁰

To be fair, Biden did ultimately retain COVID-related limited earnings-retention requirements for credit unions (anticipat-

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ing the deposit of stimulus checks),¹²¹ letting truckers drive more hours, and allowing teenage “next generation” truck drivers in response to supply chain disruptions. Promotion of the Coronavirus Aid, Relief, and Economic Security (CARES) Act-based rural telehealth funding continued, but this was unsurprising, as it entails federal oversight of a new program that can be expanded later.¹²² Biden also relaxed some trade restrictions on European steel and aluminum, but tariffs on Chinese goods remain. Although not a COVID-related action, the FDA also issued a rulemaking to make certain hearing aids available over the counter.¹²³ This effectively completes Biden’s 2021 regulatory streamlining inventory.

Environmental Regulatory Easing Revoked. Some of Trump’s energy-, environment-, and infrastructure-related orders were revoked in Biden’s “Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis” directive, which also revoked the permit for the Keystone XL pipeline. Of Trump’s environmental regulatory rollbacks,¹²⁴ there were 104 actions specifically listed by Biden for review and restoration, the bulk from the Environmental Protection Agency and Departments of Energy and the Interior.¹²⁵ Biden rejoined the Paris climate agreement¹²⁶ from which Trump had disengaged;¹²⁷ prepared a separate treaty submission on “super pollutants,”¹²⁸ and recommended resurrected moratoria and price increases for oil and gas leasing on public lands¹²⁹ while appealing to OPEC to boost production¹³⁰ and later releasing 50 million barrels of oil from the Strategic Petroleum Reserve.¹³¹

The Biden administration is also restoring “social cost of carbon” and nitrous oxide and methane emission evaluation processes to put a price on “damages associated with incremental increases ... to include changes in net agricultural productivity, human health, property damage from increased flood risk, and the value of ecosystem services.”¹³² These measures will enable federal regulators to exaggerate the “social benefits of reducing greenhouse gas emissions.”¹³³ Biden’s EPA

and National Highway Traffic Safety Administration (NHTSA) restored California’s ability to institute stricter vehicle emission standards under the Clean Air Act, a waiver that had been withdrawn under Trump.¹³⁴ Obama-era mercury rules are also being reinstated.¹³⁵ Also under “re-revision” are the Interior Department’s Fish and Wildlife Service rules defining “habitat” as well as which habitats are considered “critical.”¹³⁶ Perhaps the cherry on top was restoration of Bears Ears and Grand Staircase-Escalante national monuments over the objections of Utah’s own congressional delegation.¹³⁷

On the energy conservation front, regulatory easing under Trump was reversed and new pursuits launched that, as the Competitive Enterprise Institute’s Ben Lieberman puts it, present a regulatory burden for every room in the house to such an extent that, “By one estimate, a forced switch away from natural gas [to electric appliances] would cost the average household \$750 to \$910 annually in higher energy bills.”¹³⁸ The Biden administration even undid Trump’s showerhead deregulation.¹³⁹

Labor Regulatory Easing Revoked. “Re-reversals” by the Department of Labor (DOL) included overtime pay, a “joint employer standard” on working conditions, and revocations of employers’ options to pay tipped employees less per hour.¹⁴⁰ The DOL also issued a final rule raising the hourly wage that federal contractors pay to workers to \$15, implementing an April 2021 executive order.¹⁴¹

To be sure, Trump displayed plenty of regulatory impulses, some shared by Biden. For example, Trump’s proclivity for trade restrictions and “Buy American” preferences, spending of trillions on infrastructure, zeal for antitrust and media regulation, selective calls for price controls and transparency, and affinity for federal lands holdings moratoria on oil and gas drilling¹⁴² and for industrial and social policy are impulses shared by Biden.¹⁴³

We enter a new era now, though. Whereas Barack Obama unapologetically wielded the

“pen and phone” to expand federal reach over private affairs,¹⁴⁴ Joe Biden promised a “whole-of-government” approach to the climate “crisis”¹⁴⁵ and to an equity agenda, the American Rescue Plan,¹⁴⁶ American Jobs Plan,¹⁴⁷ bipartisan infrastructure law,¹⁴⁸ and Build Back Better. More regulations and interventions are noted in Box 2.

Biden’s “Whole-of-Government” “Equity” Agenda Advances Unequal Treatment of Citizens in Spending and Regulation

Our country faces converging economic, health, and climate crises that have exposed and exacerbated inequities, while a historic movement for justice has highlighted the unbearable human costs of systemic racism. Our Nation deserves an ambitious whole-of-government equity agenda that matches the scale of the opportunities and challenges that we face.

—E.O. 13985, “Advancing Racial Equity and Support for Underserved Communities through the Federal Government,” January 25, 2021¹⁴⁹

Trump executive actions concerning social policy were revoked like the rest. One can legitimately argue that such matters should be left to states and localities, but the Biden administration is putting the nation in a different position with respect to their federalization and the inability of those citizens who disagree to escape programs implementing them or being required to fund them. In a December 2021 update on its E.O. 13985 “whole-of-government” approach to the equity agenda, the Biden administration boasted:

From the first day in office and every day since, the Biden-Harris Administration has taken a historic

approach to advancing racial equity, including directing every agency across the whole of the federal government to address the lasting impacts of systemic racism.¹⁵⁰

Equity in this framing does not mean equality of opportunity; it means equality of outcomes, which requires mandates and regulations.

The federal government’s treating of Americans as members of groups rather than as individuals has far-reaching implications for regulation and the prospects for limited government in the United States. Today’s developments embody a national manifestation and an activist choosing of sides by the federal government with respect to events unfolding at the local level on issues like gender identity and use of restroom facilities. Policies regarding the latter had been notoriously set forth in controversial guidance documents and decrees from federal departments during the Obama administration.¹⁵¹ For example, in its July 2021 *Study to Identify Methods to Assess Equity: Report to the President*, the Office of Management and Budget declared that, “Progress towards equity requires both a sprint and a marathon.” This report was prepared in response to Biden’s E.O. 13985 on “Advancing Racial Equity and Support for Underserved Communities through the Federal Government.”¹⁵²

The Department of Education in 2021 sought comment on its preference for taxpayer grant prioritization for the training of teachers and students to favor the potential awardee’s embrace of *The New York Times’s* 1619 Project and the “anti-racism” work of author Ibram X. Kendi. In the 2021 *Federal Register* on page 20,349, the department appealed to an “ongoing national reckoning with systemic racism” and the “urgency of improving racial equity throughout our society, including in our education system” to prioritize grant applications that “[t]ake into account systemic marginalization, biases, inequities, and discriminatory policy and practice in American history.”¹⁵³

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At the Department of the Interior, place names across the nation deemed derogatory are to be stricken.¹⁵⁴ Confederate statues are one thing, but the writing is on the wall that Washington, Jefferson, and Lincoln might become targets, too.¹⁵⁵ The issue in this context is not whether renaming something is a good or bad idea, but that if such decisions cannot be made locally, then few can.

Both the American Rescue Plan and the bipartisan infrastructure bill in part advance equity goals through federal procurement preferences. For example, Transportation Secretary Pete Buttigieg has promised program-by-program equity-based allocation of “clean” infrastructure funding justified in part by the “racism that went into [prior] design choices.”¹⁵⁶ In pursuit of that, one finds a November 2021 Federal Highway Administration information request regarding guidance it intends to issue, that proclaims: “The recently enacted Bipartisan Infrastructure Law invests in the deployment of electric vehicle (EV) charging infrastructure as one of many important ways to confront the climate crisis. ... [The Federal Highway Administration] is especially interested in comments suggesting ways that the guidance could promote equity in the deployment of EV charging infrastructure under these programs.”¹⁵⁷

Such policy making and spending are inherently regulatory. They pick winners and losers, and in some instances have prompted blowback, and have been struck down by courts. Pushback has included court challenges by some states to the Securities and Exchange Commission’s (SEC) approval of a Nasdaq quota and diversity rule for corporate boards.¹⁵⁸ A \$4 billion loan forgiveness program from the Department of Agriculture (USDA), under the American Rescue Plan, initially targeted nonwhite farmers.¹⁵⁹ Biden’s E.O. 13985 has induced the USDA to embark upon the open-ended pursuit of “Identifying Barriers in USDA Programs and Services; Advancing Racial Justice and Equity and Support for Underserved Communities” and the establishment at USDA of a “Racial Equity Commission.”¹⁶⁰ These

kinds of programs make the scaling back of the USDA less politically possible.

2021 brought financial regulatory proposals regarding new anti-redlining rules,¹⁶¹ and increased spending in the Treasury Department’s State Small Business Credit Initiative for what the federal government deems disadvantaged groups.¹⁶²

An ironic aspect of the Biden administration’s escalation in social spending is that, in its pursuit of increased Internal Revenue Service (IRS) funding for expanded audits of tax returns, the IRS historically targets not Wall Street but those who lack the will or ability to fight back.¹⁶³ Relatedly, the Consumer Financial Protection Bureau (CFPB) issued a regulatory proposal implementing Dodd-Frank’s Section 1071, which requires lenders to collect data on the race and gender of small business loan applicants and send that data to the CFPB.¹⁶⁴

One finds a Federal Housing Finance Agency (FHFA) rule on “benchmark goals” for “single-family and multifamily mortgages on housing that is affordable to low-income and very low-income families.”¹⁶⁵ A Department of Housing and Urban Development (HUD) “Affirmatively Furthering Fair Housing” rule that requires active integration and desegregation of neighborhoods across the nation by recipients of HUD funds has been reinstated by Biden. The rule notes that “the [Affirmatively Furthering Fair Housing] obligation requires a funding recipient to consider existing segregation, including racial segregation, and other barriers to fair housing, and then take meaningful action to address them,” and that recipients “take proactive steps towards fair housing in this manner, beyond merely refraining from discrimination.”¹⁶⁶ The Biden administration is also reinstating a “disparate impact rule,” which as *Bloomberg* put it, “bars seemingly neutral policies in lending, renting and selling that result in discrimination.”¹⁶⁷

A federal government already deeply enmeshed in personal health care has brought the equity campaign to bear there as well,

creating among other things a COVID-19 “Health Equity Task Force” within the Department of Health and Human Services (HHS) aimed at an “Implementation Plan and Accountability Plan” for “mitigating inequities caused or exacerbated by the COVID-19 pandemic and for preventing such inequities in the future.”¹⁶⁸ Also underway is a system of Medicare bonuses for doctors that implement “anti-racism” plans and that favor “trauma-informed care” for persons of color enduring “multi-generational trauma” induced by racism. The new rule advises that doctors can boost reimbursement rates if they “Create and implement an anti-racism plan using the [Centers for Medicare and Medicaid Services] Disparities Impact Statement.”¹⁶⁹

In July 2021 HHS issued guidance as part of a broader treatment of long COVID to instruct on how symptoms could qualify as a disability under the Americans with Disabilities Act, placing individuals affected under a civil rights umbrella.¹⁷⁰ The Biden administration is also allocating billions in taxpayers’ funding for equity-related “global health programs.”¹⁷¹

Equity sympathies do not seem to extend to those affected by overregulation, however. Biden revoked a Trump directive on “Protecting Americans from Overcriminalization through Regulatory Reform.”¹⁷² A rule clarifying religious exemptions for federal contractors allowing certain discrimination was also revoked.¹⁷³ (Granted, making religious compromises is a cost of accepting federal dollars.)

Erosion of Transparency and Disclosure

Agencies’ whiplash-inducing rule reversals from one administration to the next present a stark demonstration of the unworkability of administrative state governance. In addition to specific pro-regulatory rule reversals at agencies discussed above and issuance of new regulation, 2021 brought reversals in overarching regulatory liberalization policy

and a tamping down on overseers’ ability to monitor what agencies do. Following is a nonexhaustive overview of some Biden process changes and erosions in disclosure that affect all rulemaking.

Regulated parties’ protections removed.

Under Trump, agencies temporarily headed by reform-minded appointees took steps concerning “rules for rulemaking” that went beyond Trump’s umbrella two-for-one directive. They abandoned those, as well as a pandemic-phase regulatory bill of rights, a Trump executive order on “Ensuring Democratic Accountability in Agency Rulemaking”¹⁷⁴ requiring an appointee, rather than a career staffer, to sign off on rules before they become binding on the public.¹⁷⁵

“Deregulatory” rules’ designations vanished.

A novel side effect of Trump’s one-in, two-out program was the need to write rules that were deregulatory, and to keep track of them. A separate search category to isolate those “Deregulatory” rules (along with a handful of other categories related to Trump’s order) was created, but vanished in early 2021.¹⁷⁶ There is, as of this writing, no readily apparent means of going back into the Office of Information and Regulatory Affairs’ Unified Agenda database’s “advanced search” function¹⁷⁷ for any given Trump year and counting up the “Deregulatory” actions for any given agency or department, whether or not they were deemed significant. Also, while agency preambles and the OMB introductions from the Trump years are retained on the Unified Agenda landing page, one can no longer find the OIRA administrator’s detailed regulatory reform reports on “one-in, two-out” from the Trump years.

Regulatory Dark Matter Unleashed.

The George W. Bush–era oversight of agency guidance documents¹⁷⁸ was significantly enhanced by Trump’s October 2019 Executive Order 13891, “Promoting the Rule of Law through Improved Agency Guidance Documents”¹⁷⁹ which, after initial scrubbing and rescissions of guidance that “should no longer be in effect,” initiated the development of a

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searchable indexed database at every executive branch agency for disclosure of guidance documents.¹⁸⁰ Where guidance was retained or new guidance issued, the order required affirmation of its nonbinding nature, and the development of procedures for the public to petition for revocation or alteration. Along with requirements for notice and comment and OIRA review, the order directed that “each agency shall, consistent with applicable law, finalize regulations, or amend existing regulations as necessary, to set forth processes and procedures for issuing guidance documents.” By September 2020, a number of agencies had established online portals as required by E.O. 13891 with over 70,000 documents among them.¹⁸¹ By the time Trump left office, 33 agencies had issued final rulemakings on guidance procedures regarding fairness to the public and OMB review. Some agencies, to their credit, still retain portals, but the uniformity, never fully implemented prior to the election, has been halted.

One of Biden’s first directives rescinded Trump’s executive order on guidance document portals and standardized rules regarding their issuance and disclosure. While Biden did allow for agencies to “identify reforms that will promote the efficiency, transparency, and inclusiveness of the interagency review process, and determine an appropriate approach with respect to the review of guidance documents,” he also directed agencies to get rid of their final rules on guidance (FROGs).¹⁸² Thirty-three FROG procedure rules were issued, as noted, and as of this writing, 20 have been “stomped” by Biden.¹⁸³ Several U.S. senators wrote to Biden on the deterioration in guidance document disclosures he caused, but a public response to the complaint has yet to appear.¹⁸⁴

With the hollowing of portals and FROG procedures and OMB review of guidance, an unleashing of regulatory dark matter appears in the offing, given the increase in new government programs and spending in the past two years.

Agencies’ Elimination of Internal Oversight and Streamlining Procedures. The rel-

ish with which agencies repudiated Trump’s guidance directive was palpable in the speed with which some adopted nearly verbatim language disavowing their prior positions in some FROG repeals.¹⁸⁵ In addition, agencies that had taken the initiative on regulatory fairness and oversight procedures under Trump have ditched them under Biden. Following are some examples:

Justice Department Elimination of Fair Guidance Directives. Well before Trump’s executive order on guidance documents, his Department of Justice (DOJ) had issued influential “guidance on guidance” regarding DOJ binding the public via sub-regulatory guidance documents.¹⁸⁶ Those directives were revoked by Biden’s Attorney General Merrick Garland, who, while noting precedent that guidance cannot impose legally binding requirements, advised that “To the extent guidance documents are relevant to claims or defenses in litigation, Department attorneys are free to cite or rely on such documents as appropriate.”¹⁸⁷

The deregulatory Trump DOJ produced the 129-page *Modernizing the Administrative Procedure Act* in 2020¹⁸⁸ and an opinion memorandum recommending application of regulatory review to independent agencies.¹⁸⁹ These are non-starters under Biden in terms of prioritization.

Environmental Protection Agency Disavowal of Transparency and Cost-Benefit Disclosures. Trump-era EPA-proposed changes with respect to improving transparency regarding the scientific evidence on which agencies rely to craft regulations¹⁹⁰ were particularly important, given the wider replication crisis in academia and science,¹⁹¹ but were vacated days after Biden entered the White House.¹⁹² Also gone is an EPA rule, “Increasing Consistency and Transparency in Considering Benefits and Costs in the Clean Air Act Rulemaking Process.”¹⁹³ Biden’s EPA issued an interim final rule in May 2021 rescinding it, along with a press release entitled, “EPA Rescinds Unnecessary Benefit-Cost Rule.”¹⁹⁴ The EPA had for four years maintained its own “Deregulatory Actions” landing

page running online tallies to provide up-to-date public information on paperwork and streamlining actions. The website link still works, but has the following disclaimer:

This is not the current EPA website. To navigate to the current EPA website, please go to www.epa.gov. This website is historical material reflecting the EPA website as it existed on January 19, 2021. This website is no longer updated and links to external websites and some internal pages may not work.¹⁹⁵

Department of Transportation Rulemaking and Guidance Policies Reversal. Perhaps the most detailed processes and “rules for rules” in the Trump administration came from the Department of Transportation (DOT) under Secretary Elaine Chao, with the codification of new procedures encompassing transparency, guidance, enforcement, and due process.¹⁹⁶ These innovations (and the department’s FROG procedures) were removed in an April 2021 DOT rulemaking under Secretary Pete Buttigieg, in fulfillment of assorted Biden directives:

This final rule removes the Department’s internal policies and procedures relating to the issuance of rulemaking and guidance documents from the Code of Federal Regulations. In addition, this final rule removes regulations concerning the initiation and conduct of enforcement actions, including administrative enforcement proceedings and judicial enforcement actions brought in Federal court.¹⁹⁷

Sunsetting of Rule Sunsetting at the Department of Health and Human Services. The Department of Health and Human Services under Trump issued a detailed Regulatory Flexibility Act-based rule on setting expiration dates for certain regulations with requirements for retrospective review every 10 years to determine whether the rule has a significant impact on small entities and whether it is still needed or “redundant, overlapping,

or inconsistent.”¹⁹⁸ A proposed rule to withdraw the Trump sunset rule was issued in October 2021.¹⁹⁹

Interestingly, the Federal Communications Commission (FCC)—as an independent agency never bound by any Trump executive order—issued a January 2020 white paper enumerating steps taken on eliminating and modernizing outdated regulations.²⁰⁰ In November 2020, the FCC’s Office of General Counsel and Office of Economics and Analytics released a joint memorandum reinforcing economic analysis at titled “Legal Framework and Considerations for Regulatory Impact Analysis.”²⁰¹ As of this writing, these remain intact.

“Whole-of-Government” Environment and Climate Agenda Elevates Regulation on an Economy-Transforming Scale

Climate is heavily embedded in Biden’s executive actions, the American Rescue Plan, the infrastructure package (deemed the largest climate legislation to be enacted²⁰²), the Inflation Reduction Act, and legislation purportedly addressing competition with China.²⁰³ Biden has sought to address climate change through executive action. Rooted in hobbling domestic fossil energy development, the whole-of-government climate approach has engaged multiple departments and agencies in implementing environmental and emissions regulatory policies, along with the equity agenda, rather than in energy promotion and grid resilience.

Across the board, administration policies call for agencies to “prioritize action on climate change in their policy-making and budget processes, in their contracting and procurement, and in their engagement with State, local, Tribal, and territorial governments; workers and communities; and leaders across all the sectors of our economy.”²⁰⁴ Even the Federal Emergency Management Agency (FEMA), says in its new “strategic plan” that

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“FEMA will take a people first approach to increase climate literacy, develop tools, and allocate resources informed by future risk estimates to target investments to create a more equitable and resilient nation.”²⁰⁵ In its pursuit of carbon neutrality, the administration even calls for a “Civilian Climate Corps” to:

... mobilize the next generation of conservation and resilience workers and maximize the creation of accessible training opportunities and good jobs. The initiative shall aim to conserve and restore public lands and waters, bolster community resilience, increase reforestation, increase carbon sequestration in the agricultural sector, protect biodiversity, improve access to recreation, and address the changing climate.²⁰⁶

This approach has even taken root at financial regulatory agencies. The Treasury Department now hosts a “climate hub” to decide how to address the weather with spending and tax policies.²⁰⁷ The Federal Reserve’s “Climate Change and Financial Stability” report is on task to thwart alleged risks that climate change poses to the banking system²⁰⁸ and to undertake a “climate scenario analysis” in bank stress tests to steer capital away from fossil-fuel energy.²⁰⁹ The Employee Benefits Security Administration is pursuing “amendments to the Investment Duties regulation under Title I of the Employee Retirement Income Security Act of 1974” to convey to fund managers “that climate change and other ESG factors are often material and that in many instances fiduciaries should consider climate change and other ESG factors in the assessment of investment risks and returns.”²¹⁰ Law professors Todd Zywicki of George Mason University and Sanjay Baghat of the University of Colorado Boulder have examined the empirical evidence on ESG and found that, rather than ESG making companies more profitable, profitable companies spend more money on ESG and divert shareholder money to enhance public reputation.²¹¹

The Department of Defense (DOD), its vast size and spending notwithstanding, has

traditionally been left out of the regulatory cost mix, though it should not be, given its procurement heft and its involvement in climate policy and artificial intelligence. A \$768 billion defense bill was just signed in December 2021²¹² to fund a DOD that sees climate change as a risk to national security and writes official reports to that effect.²¹³ In October, DOD teamed up with the General Services Administration and the National Aeronautics and Space Administration (NASA) on a proposal “to ensure that major Federal agency procurements minimize the risk of climate change.”²¹⁴ Before this latest climate-spending foray, the U.S. government was already the “world’s largest purchaser of goods and services,” to the tune of \$500 billion a year in annual contracts, according to the Small Business Administration—an extent that would be considered a monopsony if anyone else were doing it.²¹⁵

“Competition Policy”: Antitrust Regulation and Federal Action Shrink the Private Sector’s Economic Dominance

But let me be very clear: Capitalism without competition isn’t capitalism; it’s exploitation. Without healthy competition, big players can change and charge whatever they want and treat you however they want.

—President Joe Biden, remarks upon the signing of executive order on “Promoting Competition in the American Economy”²¹⁶

In July 2021, Biden issued Executive Order 14036, “Promoting Competition in the American Economy.”²¹⁷ He often castigates business “concentration” and “market power” heedless of the contradictions entailed in an interventionist agenda characterized by a central government throwing its weight around to fulfill progressive policy goals like renewable energy mandates. In January 2022, Biden and Attorney General Merrick

The Department of Defense has traditionally been left out of the regulatory cost mix, though it should not be, given its procurement heft.

Garland hosted a roundtable unveiling new pricing transparency regulation targeting meat processing, sugar production, insurance, airlines, and publishing.²¹⁸ This went beyond antitrust regulation to invoke new interpretations of industry-specific statutes.²¹⁹ Garland touted a new one-stop portal for citizens to snitch on alleged violators of the Sherman and Clayton antitrust acts.²²⁰ They also announced hundreds of millions in American Rescue Plan-based government spending in meat processing.²²¹

Large-scale government contracting and interventions in the name of competition will involve new levels of interference. Everyone from big business to contractors that happen to work with the government are increasingly facing minimum wage requirements, the promotion of “good union jobs,” and Buy American rules. Meanwhile, the administration seems oblivious to how its own climate polices are likely fueling future shortages of already politically contentious, critical rare earth elements.²²²

The Biden administration’s stance on competition views consolidation as bad in any sector that happens to catch enforcers’ attention, but not when the government exercises its powers across all sectors. Granted, Donald Trump and his Federal Trade Commission and Justice Department casually invoked antitrust action against media, telecom, “big tech” and beyond.²²³ Where Trump weighed in often against Section 230 immunities for tech platforms, Biden invoked it on the campaign and has verbally pressured tech companies as president. Where Trump’s 2019 FTC announced a “technology task force” to assess alleged antitrust violations in the sector and increase scrutiny of acquisitions,²²⁴ today’s FTC wants free hand to issue ex ante regulations.²²⁵

Bills introduced in the 117th Congress involve antitrust regulation, algorithms’ employment of user data in online advertising, even the treatment of phone-centered lifestyles and video gaming as “addiction.”²²⁶ Each camp has its own reasons for regulation, but the advantage for progressives is

that the left will control these administrative agencies, and big tech has pursued partnership regulation with them for years.²²⁷ Meanwhile, the suspicious or confused might note that the federal government procures cloud services from the same companies it regulates.

Tariffs and other trade barriers hurt Americans with direct costs, regulatory uncertainty, and market losses.²²⁸ Biden increased tariffs on Canadian lumber, raising prices for U.S. homebuilding projects.²²⁹ Biden and Trump share an affinity for trade restrictions in the form of executive orders for Buy American preferences.²³⁰

When inflation hit new highs in October 2021, Biden directed his National Economic Council to reduce rising energy costs,²³¹ and issued a letter to the independent FTC seeking a probe into alleged price gouging and anticompetitive behavior by oil and gas companies.²³² A perhaps inadvertently aptly named “Supply Chain Disruptions Task Force”²³³ sought to place the blame on the private sector over “consolidation in the shipping and rail industries,”²³⁴ higher food prices,²³⁵ and other disruptions.²³⁶ Meanwhile food supply pressure continues in 2022, from fields to shelves.²³⁷ The administration labors under misperceptions about rising prices, which in some instances have not exceeded inflation.²³⁸

Also looming are more regulations on cryptocurrencies to shape how a future economy makes and accepts payments,²³⁹ as well as to protect the government from currency competition. The Federal Reserve is even considering issuing its own central bank digital currency (CBDC), and in January 2022 released a 40-page report on CBDCs that it called “the first step in a public discussion.”²⁴⁰ The Trump administration was little different, also exploring government-run electronic payment systems designed to directly compete with private banks’ processing structures.²⁴¹ (Trump declared himself “not a fan” of cryptocurrencies.²⁴²) The Trump-era SEC sought to regulate cryptocurrencies as “securities”²⁴³ despite lacking legal jurisdic-

Tariffs and other trade barriers hurt Americans with direct costs, regulatory uncertainty, and market losses.

Large-scale central government infrastructure spending projects have massive but largely ignored regulatory effects.

tion over currencies and tokens.²⁴⁴ The Trump Treasury Department called crypto a “national security” issue.²⁴⁵ The cherries on top for those opposed to the liberation that crypto could afford to the public may be U.S. government support for a “global minimum tax” in the name of tax harmonization and flirtation with wealth taxes, thus taking away any ability to say no to governments.²⁴⁶ But again, the U.S. government’s stance is that private entities are the ones with abusive monopoly power.

The Consumer Financial Protection Bureau appears to have set its sights on regulating artificial intelligence (AI), claiming in a proposed rule issued in spring 2021: “Although use of AI holds the potential to expand credit access to underserved consumers, use of such technologies may also hold risks, including risks of unlawful discrimination and lack of transparency.”²⁴⁷

In the health sector, we see continued pharmaceutical and hospital price transparency mandates and controls. The Trump administration sought to reduce prescription drug costs with executive actions like price caps (such as on insulin and injectable epinephrine), price transparency, negotiated rates, and other mandates like tying U.S. drug prices to lower ones in other countries.²⁴⁸ Biden continues pursuing price controls²⁴⁹ such as capping monthly insulin copays at \$35²⁵⁰ and proclaiming, “I’m committed to using every tool I have to lower prescription drug costs for Americans, consistent with the drug companies getting a fair return on their investment.”²⁵¹ Such price interference will affect incentives to pursue medical and pharmaceutical research, potentially leading to fewer health-enhancing and life-saving innovations in the future.²⁵²

Industrial Policy and Large-Scale Infrastructure Spending and Regulatory Subsidies

Large-scale central government infrastructure spending projects have massive but largely

ignored regulatory effects. Grand-scale government infrastructure alters the trajectories of what should be competitive private industries engaged in mega-transactions, removing swaths of business and economic activity from competitive enterprise altogether. The bipartisan infrastructure law and Build Back Better instead doubled down on protecting siloed central regulation and regulated common carriers that for decades have artificially separated network industries like transportation and communications, neglecting the needed pursuit of ambitious multiple uses of private rights of way on land and in airspace, and likely destroyed trillions in infrastructure wealth creation.²⁵³ Parts of it have been resurrected in the recently passed Inflation Reduction Act of 2022.²⁵⁴

The year 2022 began with Biden fronting another bipartisan push, a “once-in-a-generation investment in American science, technology and innovation to help the U.S. preserve its competitive edge,”²⁵⁵ with billions of dollars in new government “investment” in basic research and to address the chip shortage and ostensibly aimed at addressing competition from China.²⁵⁶ The Senate-passed U.S. Innovation and Competition Act, once named the Endless Frontier Act, passed the House in 2022 following the failure to pass Biden’s Build Back Better legislation²⁵⁷ (The House incarnation was called the America Competes Act).²⁵⁸ On top of those new concerns, a large amount of legacy construction job category regulations are already in place,²⁵⁹ along with Buy American rules and union preferences in the American Jobs Plan.²⁶⁰ To that end, the Biden White House provided detailed advice for potential handout beneficiaries in a 460-page guidebook covering 375 programs the federal government is funding in climate, energy, transportation, and broadband.²⁶¹

Trump, too, it must be emphasized, favored trillions in government infrastructure spending²⁶² and corporate welfare and cronyism like that embodied in the Export-Import Bank,²⁶³ ethanol subsidies,²⁶⁴ and even a national 5G proposal,²⁶⁵ that has since eased into FCC

plans for subsidized rural 5G.²⁶⁶ A Trump rule to promote “accelerated deployment of 5G and other advanced wireless services by facilitating the collocation of antennas and associated equipment on existing infrastructure”²⁶⁷ is more than matched by Biden’s national electric vehicle charging network, spawned thanks in part to the bipartisan infrastructure law already being implemented by guidance document.²⁶⁸ As *The Wall Street Journal* reported in August 2021, “Private companies will be required to publish details about their products, much like nutrition labels, and offer low-cost service plans if they take federal funds to help build networks.”²⁶⁹ The Biden administration also revived efforts to impose net neutrality regulations,²⁷⁰ and the nomination of FCC commissioners to do so.²⁷¹

While some limited permitting streamlining was retained in the infrastructure bill,²⁷² the Biden administration is taking steps like removing the Trump-era Council on Environmental Quality’s relaxation of environmental review provisions of the National Environmental Policy Act. These moves will increase difficulties in expanding permitted infrastructure and projects,²⁷³ by restoring pre-Trump interpretations of “cumulative” and “indirect” environmental effects.²⁷⁴

Across-the-board federal intervention remains the prevailing mindset, undermining the prospects for private sector dominance of frontier sciences and the technologies on which future prosperity and well-being will depend.

AI offers a useful example. Under Trump, nothing approaching a laissez-faire outlook with respect to AI prevailed.²⁷⁵ Under Biden, the regulatory pursuit continues, with the White House Office of Science and Technology’s call for an “AI Bill of Rights.”²⁷⁶ This notion does not refer to protecting citizens from government’s abuse of AI to discriminate against citizens and undermine their privacy, but promotion of the equity agenda by means of procurement rules and other forms of federal oversight. This federalization is concerning enough on its own, but it is especially dangerous in the case of AI, for

which relevant policy will likely develop in an environment in which the Department of Defense funds a great deal of AI research, with the potential of displacing the private sector’s role in steering the technology.²⁷⁷

Relatedly, Trump’s establishment of the Space Force, enacted in the National Defense Authorization Act of 2020,²⁷⁸ and Biden’s embrace of it, illustrate the one-way ratcheting of government programs and their replacement of large-scale private enterprise with industrial policy.²⁷⁹ Making the Space Force a sixth branch of the armed forces will heavily influence technology investment, freedom of exploration, and commercial activities (such as asteroid mining) in a still-nascent space sector.²⁸⁰ This will not lighten the touch of already thorny space launch and reentry licensing requirements where commercial space activities have not taken root beyond NASA contracting and partnerships, and Federal Aviation Administration supervision.²⁸¹

It is within this environment that Biden, like Trump, rechartered the President’s Council of Advisors on Science and Technology (PCAST) on January 27, 2022—this time coopting it for the social, climate, and equity agendas:

PCAST shall advise the President on matters involving policy affecting science, technology, and innovation, as well as on matters involving scientific and technological information that is needed to inform public policy relating to the economy, worker empowerment, education, energy, the environment, public health, national and homeland security, racial equity, and other topics.²⁸²

In January 2022, Biden told PCAST that he was interested in hearing about its work “particularly around addressing the disparities in our public health system, meeting the threat of climate change.”²⁸³ As with infrastructure networks hampered by nearly a century of federal oversight by various agencies, it is counterproductive for the sciences

Across-the-board federal intervention remains the prevailing mindset, undermining the prospects for private sector dominance of frontier sciences and the technologies on which future prosperity and well-being will depend.

and their practical applications to proceed walled off from one another in an arbitrary legislative appropriations environment.

Pandemic Mandates Warn of Future Intimidation and Normalization of Censorship

I make a special appeal to social media companies and media outlets: Please deal with the misinformation and disinformation that's on your shows. It has to stop.²⁸⁴

—President Joe Biden,
January 13 2022

Deplatforming and debanking can be appropriate private actions, but they become censorship when encouraged by government.

For weeks, the vaccine and masking mandates to which business and the public were reacting did not actually exist, apart from Biden's press conference and media releases.²⁸⁵ Yet companies were facing pressure to get in line. Congress had the ability to issue a resolution of disapproval under the Congressional Review Act to make a statement in the early days of Biden's directive before it was turned into a written rule, but did not. Even upon the Supreme Court overturning²⁸⁶ of OSHA's vaccine-or-testing mandate ("emergency temporary standard"²⁸⁷) on businesses with 100 or more employees, Biden called on business to comply anyway.²⁸⁸ As William Yeatman of the Cato Institute noted:

By now, Congress has ceded enough policymaking initiative to render itself expendable. When Biden wants a law made, he can go it alone. All he has to do is order an agency to push the envelope of its existing authority.²⁸⁹

Unless a court steps in, eventually something will stick. In 2021, the federal government—until its mandates were overturned by courts—overruled all individuals' and medical practitioners' decisions (dismissed by media and the White House as "vaccine hesitancy"²⁹⁰) to not accept compulsory vaccination for which no recourse against

indemnified, highly profitable vaccine makers was available in case of harm or injury.²⁹¹ The FDA, meanwhile, asked for over 70 years to publicly disclose documents related to vaccine approval, but a court gave the agency eight months.²⁹² Liability and insurance concerns were a major issue in 2020, when discussions were turning to reopening and whether or not firms would be liable if workers got sick. Yet, lockdowns failed to stop the spread and "had little to no effect on COVID-19 mortality," according to a John Hopkins meta-analysis, imposing enormous costs in terms of job loss, educational delays, and psychological effects.²⁹³ There is no regulatory intervention greater than lockdown, yet it will all happen again without measures to prevent the abuse of crises.²⁹⁴

Whether in a pandemic setting or at any other time, deplatforming and debanking can be appropriate private actions, but they become censorship when encouraged by government.²⁹⁵ On the other side of the coin, the government can inappropriately compel business association. For example, the Trump administration's Office of the Comptroller of the Currency issued a "fair access to financial services" rule, a "fairness doctrine" of sorts for banks to prevent discrimination or "debanking" based on political viewpoints or activities, which can undermine financial institutions' freedom of association.²⁹⁶ In 2021, the White House enlisted tech companies in what it called a campaign to fight "misinformation" by seeking its removal from social media. July 2021 saw warnings from the surgeon general on the "urgent threat of health misinformation."²⁹⁷

Surveillance

Related to speech mandates is the normalization of surveillance, part of a broader war on anonymity that the pandemic helped globalize.²⁹⁸ Recent forays have included the noted CFPB data collection effort and a forum for reporting "anticompetitive" behavior. Early in the pandemic the Trump Centers for Disease Control instructed states to submit per-

sonal information—including names, birth dates, ethnicity, and addresses—of individuals vaccinated against COVID-19, raising alarm over a federal vaccine registry.²⁹⁹ Below are some concerning developments with respect to unwarranted intrusiveness that emerged in 2021.

- The IRS will require third-party payment processors like PayPal or Venmo to report transactions of \$600 or more.³⁰⁰ As the Motley Fool put it, “If You Make \$600 or More From Your Side Hustle in 2022, the IRS Will Know About It.”³⁰¹ Senate Minority Leader McConnell complained that “ordinary Americans” will be caught up in the “IRS Dragnet.”³⁰² Yet, McConnell did not oppose the PATRIOT Act’s surveillance that made the IRS move a more a natural development.³⁰³
- The IRS in 2021 made simultaneous moves to incorporate biometric facial recognition scans to access and view one’s tax returns.³⁰⁴ Only the public outcry that resulted led to the agency declaring in February 2022 that it will “transition away from using a third-party service for facial recognition to help authenticate people creating new online accounts.”³⁰⁵
- Policy makers view cryptocurrencies as a justification to expand surveillance and undermine anonymity. In a December 2021 letter to a U.S. senator in response to a query regarding “IRS authority to conduct compliance activity related to virtual currency,” the IRS declared, “We share your concern that virtual currencies can be used to evade compliance, and that the anonymous nature of virtual currencies may make them attractive for those who would engage in illicit activities.”³⁰⁶
- The Department of Homeland Security (DHS) issued a request for proposals to “incorporate biometric technologies to monitor employees’ health and ‘psychosocial information’” in an effort to “optimize ‘human performance and resiliency’ among the workforce.”³⁰⁷ Hefty government procurement departments

can impose requirements on contractors that can ultimately apply to ordinary businesses and their workforces. DHS already incorporates, and seeks additional, enhanced biometric collection and use in other respects.³⁰⁸

- Biden shares with Trump an interest in gun regulations and background checks that can advance government tracking of private behavior. Trump sought to respond to threats of gun violence via the monitoring and tracking of individuals with mental illness, or suspected of such, via smartphones and wearable health-monitoring devices.³⁰⁹ Similarly, announcing that “this Administration will not wait for Congress to act,” the Biden Justice Department is trying to influence states by publishing model “red flag” legislation to allow not just families but law enforcement to “petition for a court order temporarily barring people in crisis from accessing firearms if they present a danger to themselves or others.”³¹⁰ A new requirement that licensed dealers who sell firearms to the general public “must certify that they have available secure gun storage or safety devices” available for purchase as well.³¹¹ Alongside all this, federal databases of gun owners have expanded dramatically in the past year.³¹²

The above is just a sampling of 2021 surveillance highlights. Washington’s censorship impulse and the tech economy’s overlap with the surveillance state will present greater challenges in the era of centrally directed infrastructure. For example, the bipartisan infrastructure law requires that future vehicles incorporate a “safety device” that will “passively monitor the performance of a driver of a motor vehicle to accurately identify whether that driver may be impaired.”³¹³ Some have called this a “kill switch” for vehicles.³¹⁴ The ability to remotely disable a vehicle is not new, of course; the question is over who does it and when. These developments have emerged in an era when recent document declassifications show U.S. intelligence agencies continue bulk data collec-

*Trump’s own
regulatory
impulses became
dominant over
his streamlining
agenda.*

tions and mishandling of American’s private information.³¹⁵

The Inflation Reduction Act’s Expansion of Spending and Regulation

Like the American Rescue Plan and the bipartisan infrastructure law, the Inflation Reduction Act legislation encompasses large swathes of the economy down to the household level. It took both parties to get to this point. One government overreach leads to a greater one later. Trump’s executive order on housing assistance and “lawful measures to prevent residential evictions and foreclosures,”³¹⁶ paved the way for Biden to do the same with a Centers for Disease Control and Prevention (CDC) notice extending an eviction moratorium in areas with high transmission rates—despite the probability of a court overturning it³¹⁷—in order to push money out fast. Biden stated: “Whether that option will pass constitutional measure ... I can’t tell you. ... There are a few scholars who say it will, and others who say it’s not likely to. But, at a minimum, by the time it gets litigated it will probably give some additional time while we’re getting that \$45 billion out

to people who are in fact behind in the rent and don’t have the money.”³¹⁸

Not infrequently, Republicans enable the broader progressive regulatory agenda.³¹⁹ A “nationwide paid family leave” plan touted by Trump in his second State of the Union address³²⁰ came to partial fruition in December 2019 in the same defense spending package that birthed the Space Force.³²¹ Shortly thereafter, the Families First Coronavirus Response Act delivered paid sick leave and family and medical leave at a time when many businesses could least afford it and would need COVID relief funds themselves.³²² The bipartisan CARES Act³²³ brought the Paycheck Protection Program with loan forgiveness provisions,³²⁴ eviction moratoria, student loan payment deferrals (extended by administration directive),³²⁵ and federally supplemented unemployment payments that help set precedent for a federal universal basic income.³²⁶ Congress rushed the CARES Act through without hearings or debates, while the White House claimed of Build Back Better that “the plan is fully paid for, is the most fiscally responsible major bill that Congress has considered in years, and reduces the deficit in the long run,”³²⁷ and that the Congressional Budget Office lacked the experience to legitimately weigh in.³²⁸

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