

# Biden’s whole-of-government regulatory philosophy

*Let’s be clear, Kamala and I came into office determined to transform how the economy works—change the way it literally functions.*

—Joe Biden, September 23, 2023<sup>1</sup>

Prior editions of *Ten Thousand Commandments* extensively surveyed the Biden administration’s whole-of-government campaigns and the role of executive actions, rules, and memoranda in their pursuit. The whole-of-government philosophy advocates using every possible lever of government to advance certain policy objectives. In practice, that means that agencies, instead of being guided solely by their core missions, must also pursue goals such as equity and fighting climate change. This management approach tends to consolidate power in Washington, which undermines the federalist system of government.

In 2023, Biden’s equity and environmental justice plans from multiple agencies contained a long list of new developments. The Justice40 Initiative

seeks to have 40 percent of federal spending bolster disadvantaged communities.<sup>2</sup> New National Environmental Policy Act guidelines<sup>3</sup> and the launch of the American Climate Corps<sup>4</sup> expanded environmental regulation and activism. A “Modernizing Regulatory Review” executive order raised cost review thresholds and instigated a rewrite of Circular A-4, which contains guidance for cost-benefit analysis. Both of these elements weakened the Office of Management and Budget’s watchdog role.

The Securities and Exchange Commission became an environmental regulator with its proposed climate disclosure rule.<sup>5</sup> New competition policy interventions<sup>6</sup> include price controls, attacks on junk fees,<sup>7</sup> and targeting of online user reviews.<sup>8</sup> Federal subsidies were weaponized to impel compliance actions not demanded in statute<sup>9</sup> and to rationalize even more stringent regulation.<sup>10</sup>

Public-private partnerships expanded in fields ranging from communications to electric vehicle

charging stations, the latter with abysmal rollout.<sup>11</sup> Hundreds of billions of dollars of defense spending<sup>12</sup> was repurposed toward Buy American regulations,<sup>13</sup> foreign investments,<sup>14</sup> and escalation of cross-agency supply-chain interference.<sup>15</sup>

Biden invoked emergency powers to manage supply chains<sup>16</sup> and artificial intelligence.<sup>17</sup> The Federal Reserve launched its FedNow instant payment system<sup>18</sup> in competition with private actors it regulates and is working to undermine the anonymity enabled by cryptocurrencies.<sup>19</sup> Anti-privacy and domestic surveillance escapades are ongoing, via Department of Homeland Security shadowing,<sup>20</sup> data collections on small-business credit applications,<sup>21</sup> heightened screening at airports,<sup>22</sup> and mandates to allow government to remotely disable automobiles.<sup>23</sup>

Censorship continues through funding suppression of what the federal government regards as mis-, dis-, or mal-information<sup>24</sup> and the restriction of access to government databases, such as at the National Institutes of Health, if research is suspected of not adhering to official narratives on health, climate, or other controversial policies.<sup>25</sup>

The list goes on, but alongside these are traditional nanny-style proposals to ban menthol cigarettes, hair relaxers, and food dye Red No. 3. More on where all that comes from is evident in the rules, executive actions, and guidance documents surveyed in the following pages.

Intentionally or not, Congress is enabling Biden's agenda. Biden's consolidations and cartelization are amplified by recent sweeping legislative enactments costing trillions of dollars. Washington boasts of being the world's largest purchaser of goods and services,<sup>26</sup> not infrequently benefiting foreign firms,<sup>27</sup> as well as politically connected

and politically popular groups. Congress and the president also collaborate on an enormous volume of grants-in-aid to states and exploit emergency powers at every opportunity.<sup>28</sup>

In this setting, governance by guidance and nudges can replace much traditional lawmaking. This may explain some of the dips in rulemaking counts, even as regulatory costs grow. By making progressive initiatives so numerous and crosscutting, the whole-of-government approach means that even the demise of an agency would not derail the agenda. The tentacles are such that future administrations and Congresses will be unlikely to eliminate it all. Policymakers must appreciate that minor rollbacks or traditional administrative state reforms are no match for the torrent coming at Americans.

Biden and Congress's regulatory liberalizations have been de minimis by comparison. They include permission for hearing aids to be sold over the counter, the termination of something called the Board of Tea Experts,<sup>29</sup> certain extensions of COVID-19 telemedicine flexibilities for practitioners and patients,<sup>30</sup> potential authorization of ownership of certain nonreleasable or captive-bred migratory birds and eagles for teaching purposes<sup>31</sup> (even amid crackdowns on ownership and display of big cats<sup>32</sup>), the removal of certain restrictions on introducing experimental populations of endangered and threatened species beyond their historical range,<sup>33</sup> and the removal of the Nelson's checker-mallow from the Endangered Species List.<sup>34</sup>

To his credit, Biden signed the Providing Accountability Through Transparency Act of 2023, now Public Law 119-9.<sup>35</sup> This law requires that agencies, "in providing notice of a rulemaking . . . include a link to a 100-word plain language summary of the proposed rule."