
PRESIDENT BIDEN’S FIRST 100 DAYS: A SYMPOSIUM[†]

*Jason Mazzone**

INTRODUCTION

During his first 100 days in office in 1933, [Franklin D. Roosevelt](#) signed fifteen major bills into law and issued a series of executive orders directed at pulling the nation out of economic depression. Ever since, presidents have taken office with high public expectations for their first 100 days. The 100-day marker is likely a poor overall gauge of a successful presidency: Abraham Lincoln is among the greatest presidents of all time and, yet, during his first 100 days in the White House, the country split apart. Recognizing the deficiency of the measure, John F. Kennedy sought to end 100-day evaluations. After reciting a list of pledges in his own [inaugural address in 1961](#), Kennedy said: “All this will not be finished in the first one hundred days. Nor will it be finished in the first one thousand days, nor in the life of this Administration, nor even perhaps in our lifetime on this planet. But let us begin.” Yet voters do not wait a lifetime for results—and presidents cannot even avoid the scrutiny that Day 100 brings.

When President Joe Biden took office on January 20, 2021, COVID-19 had [already killed](#) 400,000 Americans. Two weeks before Biden’s inauguration, a violent mob [stormed the Capitol](#), where Congress was meeting to count the electoral college votes and certify Biden as the winner of the 2020 presidential election. Biden’s predecessor, Donald Trump, [falsely claimed](#) the election had been stolen because of widespread fraud and cheating. As Biden took the oath of office, millions of Trump supporters held fast to the belief that the election was rigged and Trump’s departure an injustice. At the other extreme, some Democrats, mistaking election for revolution, called for truth commissions, purges of enemies, and other tools suited only to actual political transformations.

As a candidate, Biden [promised action](#) on economic inequality, healthcare, education, immigration, climate change, policing, voting rights, gun control, unemployment, and other familiar issues. Presidents, of course, are most effective when they have the support of Congress. Biden knows his way around Congress:

[†] Sponsored by the *University of Illinois Law Review* and the Illinois Program in Constitutional Theory, History and Law.

* Albert E. Jenner, Jr. Professor of Law, University of Illinois Urbana-Champaign.

he served in the Senate from 1973 to 2009. Trump, by contrast, had held no federal office at all before he entered the White House. But when Trump became President four years ago, Republicans controlled both the House and the Senate. Biden started his term with a Senate split 50-50 and Democrats holding only a narrow lead in the House. Biden's legislative agenda necessarily requires cooperation across political divisions.

In this symposium, forty-one experts analyze the Biden Administration's early achievements—as well as its shortcomings and missteps—across a wide range of areas and discuss what they expect from the administration going forward. The symposium contributors have different backgrounds and offer different perspectives, but each brings a sharp analytical eye to key aspects of the administration's activities during its first 100 days. Together, the essays provide a comprehensive resource for understanding and debating the initial period of the Biden presidency and for informed evaluation of the administration's activities in the coming months and years.

For every president, economic growth is a priority. Several symposium essays take up Biden's economic agenda and the associated challenges his administration faces. [Nolan Miller and Julian Reif](#) report on key components of Biden's economic program, including his response to the COVID-19 pandemic, domestic spending priorities, climate policy, tax policy, long-term fiscal policy, and immigration. [Frank Pasquale](#) explores the likelihood of “budgetary courage” to pursue large-scale spending programs adequate to the effects of the pandemic, climate change, and other challenges. [Richard Kaplan](#) highlights some important shifts in the area of tax policy, geared, as he reports, to financing ambitious public programs and addressing economic inequality. In her own contribution on taxation issues, [Michelle Layser](#) reports that, so far, the incoming administration has failed to deliver on one significant campaign commitment: to reform the Trump-era tax incentive program known as “Opportunity Zones.” Layser calls for swift attention to the issue. [Sean Anderson](#) explores the future orientation of the Biden Administration towards ESG investing—investment decisions that are based on the political or social behavior of companies—in the context of employee pension plans.

[Rummana Alam](#) centers her attention on three aspects of Biden's healthcare initiatives: responding to the COVID-19 pandemic; expanding access to care under the Affordable Care Act; and promoting health equity. [Margareth Etienne](#) explores how in the area of education, the new administration's main focus has necessarily been on efforts to safely re-open schools during the pandemic, but she points also to some broader educational reforms for which the administration is already laying groundwork.

Two of the symposium's contributors focus on pressing issues of immigration. [Pratheepan Gulasekaram](#) writes of a realignment under the Biden Administration of the relationship between the federal government and states (and localities) in immigration enforcement and immigrant integration. In his detailed essay, [Anil Kalhan](#) explores ways in which the outgoing Trump administration

implemented measures that have actually thwarted certain of the new administration's immigration-related reforms.

Five essays take up issues of criminal law and justice. [Melanie Wilson](#) examines how Biden's choices of leaders at the Department of Justice and of U.S. Attorneys shed light on prospects for greater equality in the criminal justice system as a whole. In his essay, [Jon Gould](#) observes that in the 78 days between Election Day and Trump's departure from office, six defendants on federal death row were executed. Gould then explores the possibility of an end to the federal death penalty under the Biden Administration. [Jared Hamernick](#) writes on recent incidents of police violence and observes that 100 days into Biden's presidency there has been no substantial federal effort to demilitarize local police departments. [Elizabeth Joh](#) identifies the challenges for federal governmental responses to police misconduct, but she also points to some key areas where the Biden Administration could achieve some success. For his part, [Robert Mikos](#) draws on lessons from the recent liberalization of marijuana laws at the state level to urge the Biden Administration to decline to prosecute anybody who uses psilocybin (a hallucinogenic found in magic mushrooms) in accordance with Oregon's recent legalization of that substance.

On the national security front, [Jonathan Hafetz](#), [Scott Roehm](#), and [Hina Shamsi](#) assess the prospects of the Biden Administration closing the Guantanamo military prison. They conclude that some early signals, including the position the administration has taken on a detainee's pending petition before the Supreme Court, suggest closure of Guantanamo is not likely to be on the immediate horizon.

Two essays weigh in on courts and judicial processes. [Michael Helfand](#) explores how politics in the early days of the Biden Administration might actually impact the Supreme Court's decisions in area of religious liberty. [David Noll and Zachary Clopton](#) urge the administration to pursue measures to cut back on compelled arbitration in civil disputes and they offer several available mechanisms for it to do so, including through agency action.

Two essays take up issues related to the media. In light of President Trump's regular attacks on the press, [RonNell Andersen Jones and Lisa Grow Sun](#) make the case for Biden to become a stronger advocate for press freedom. [Heidi Kitrosser](#) urges a new orientation towards prosecuting media leaks in a way that will better promote First Amendment interests.

[Arthur Leonard](#) examines a series of executive actions the new administration has taken on LGBTQ issues but points also to congressional resistance to legislative priorities. [Lesley Wexler](#) explores how President Biden's own staffing choices and workplace standards might inform future efforts to address sexual assault and harassment in educational and military settings.

Two of the symposium essays center on environmental issues. [Jeffrey Lambert and Heidi Hurd](#) find "glimmers of recognition" on the part of the new administration of a need not just to reverse the environmental policies of the Trump era but to do away entirely with the cost-benefit approaches that, they say, have distorted environmental regulation ever since the Reagan presidency. [Amber](#)

[Polk](#) cheers the Biden Administration for its “swift, broad, and deep swing” at a series of environmental problems, but she criticizes the administration’s failure to repudiate misguided approaches to environmentalism that generate problems in the first place.

[Verity Winship](#) writes on climate change in order to explore and critique actions that one agency, the Securities and Exchange Commission, has already undertaken to pursue Biden Administration priorities. Focusing also on tools of governance, [Ronald Lee](#) draws attention to Biden’s extraordinary use of executive orders as the means to advance his agenda at a time of political polarization. [Derek Muller](#), though, reminds us of limits to executive action: Muller explains that despite Biden’s keen interest in election reform, a closely divided Congress—and Biden’s own hostility to doing away with the Senate filibuster—limit the possibility of significant electoral reform.

Contributors concerned with technology issues express some disappointment. [Derek Bambauer](#) writes that while technology policy issues were key points of interest during the 2020 presidential election campaign, the Biden Administration has yet to take significant steps on any of them. [Eric Goldman](#) concurs in that assessment and he points to the role that Congress and the states are playing on the technology front given the absence of presidential action.

The Trump administration was [often criticized](#) for failing to govern on the basis of (and sometimes just ignoring) scientific evidence. [Nathan Cortez and Jacob Sherkow](#) applaud the Biden’s administration renewed commitment to science. They also argue in favor of greater use of the regulatory tool of FDA “guidances” to promote public health benefits. [Edward Larson](#) writes of Biden’s own commitment to balancing religion with science—and the prospect that that approach may help unify a fractured nation.

Rounding out the symposium are two essays focused on partisan tussles that might lie ahead. [Josh Blackman and Seth Barrett Tillman](#) explore the political and legal consequences of a future criminal prosecution of former President Trump under the federal Insurrection Act in connection with the January 6 breach of the Capitol. [Joshua Braver](#) examines the prospect of a future fracturing of the Republican party—something that, in his assessment, is necessary for Democrats to achieve their long-term policy objectives.

Stay tuned.