

## President Biden and State Governors: two years of a positive old-style political dialogue.

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**Abstract:** Il Presidente Biden e i governatori degli Stati: due anni di un positivo dialogo politico in vecchio stile – The article discusses the institutional relationship between the Biden administration and State governors over the first two years of the Presidency, by also highlighting some of the differences in the interplay of federal and state actors in comparison with the Presidency of Donald Trump.

**Keywords:** Joe Biden; State governors; Institutional dialogue; Federalism.

### 1. State Governors and the American political-institutional system. An Introduction.

For decades the figure of the Governor has been less considered, even though it represents a very relevant part of the historical overall evolution of the all-executive power in the American political-institutional system.<sup>1</sup>

However, within their States, governors preside over the most large and important political and economic territories of the American communities; and they have powers to set agenda, to define legislation<sup>2</sup> and to outline their political address proposals.<sup>3</sup>

Therefore, even more today, the states occupy a central position in domestic policymaking and the governors are responsible for implementing policies and accountable by the public for the policies' success or failure, considering also that States play a central role in defining America's political and institutional infrastructure: now, except

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<sup>1</sup> See M. Ferguson (ed.), *The Executive Branch of State Government. People, Process, and Politics*, ABC CLIO, Santa Barbara, 2006; J. Dinan, *The American State Constitutional Tradition*, Lawrence (KS), 2009. More recently: S.M. Ambar, *How Governors Built The Modern American Presidency*, Philadelphia (PA), 2012.

<sup>2</sup> Recently, see: A. Rosenthal, *Engines of Democracy. Politics and Policymaking in State Legislatures*, Washington D.C., 2009, 264-301.

<sup>3</sup> T. Kousser, J.H. Phillips, *The power of American Governors*, Cambridge, 2012.; D.P. Redlawsk (ed.), *The American Governor*, London, 2005; L.A. van Assendelft, *Governors, Agenda Setting, And Divided Government*, Lanham (MD), 1997.

for the President, governors are the most important and powerful elected executives in the American political system.<sup>4</sup>

Consequently, the President and the Governors are very interrelated in their activities despite they are in an institutional system based on a separation of powers and on a federal constitutional system.<sup>5</sup>

Hence, the aim of this contribution is to briefly highlight the two years of relationship between President Joe Biden and the Governors, marking the role of Governors in the American political-institutional system through some relevant examples of policies developed within this relationship.

## 2. President Biden and the Governors: two years of a positive dialogue

Since his inaugural address, President Joe Biden issued an appeal for “unity” and a revival of a functional government.

Biden has suggested a practical-minded center-approach against any sort of political polarization and grievance, and against any sort of relentless partisanship.

Biden in general has firstly operated to robustly expand government’s role in fighting the pandemic and to its economic and social consequences - for example, to remove the remote schooling - and to promote a better economy, as several Governors, without any political colour, asked to him.

So, President Joe Biden met frequently with governors to discuss a wide range of topics, both in formal meetings, as the Annual meeting, and in informal contacts, also taking advantage of the opportunity to counsel with the bipartisan two-year terms’ institution, the Council of Governors. This is an institution that serves as the lead forum to strengthen partnerships between the Federal government and State governments to better protect the nation from threats to homeland security and all types of hazards. In fact, the Council focuses on matters of homeland security; homeland defence; civil support; synchronization and integration of state and Federal military activities in the United States; and other matters of mutual interest, including those involving the National Guard. Federal-state cooperation is critical to protecting communities given the evolving

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<sup>4</sup> States and Governors, at the end, are laboratories for the study of Executive Power and in general the Presidency, considering – according to Larry Sabato – that «Once maligned foes of the national and local governments, governors have become skilled negotiators and, importantly, often crucial coordinators at both of those levels. Once ill prepared to govern and less prepared to lead, governors have welcomed into their ranks a new breed of vigorous, incisive, and thoroughly trained leaders» (in L. Sabato, *Goodbye to Good-Time Charlie: The American Governorship Transformed*, 2<sup>nd</sup> ed., Washington D.C., 1983, 2). On the electoral process, see: M. D. Brewer, L. S. Maisel, *Parties and Elections in America: The Electoral Process*, 7<sup>th</sup> ed., Lanham (MD), 2015.

<sup>5</sup> However, the picture is also articulated within the structure of states themselves. Hence, not all states elect governors in the same year. In particular, forty-eight States elect their governors for four years term while only two, New Hampshire and Vermont, have two years gubernatorial terms. Except the State of Virginia which does not allow a governor to be re-elected, two-term limits - consecutive or not - are very common rule among the States.

challenges and threats facing country, which range from extreme weather to domestic and international terrorism to a global pandemic.<sup>6</sup>

After all, it is not inappropriate to point out that the 10<sup>th</sup> Amendment to the U.S. Constitution, included in the original Bill of Rights, states that “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” So, the states are independent entities within system of federalism, not mere subordinate jurisdictions of the national government; and in areas reserved to the states, the federal government cannot coerce the states into taking actions to suit federal policy preference. States enjoy unchallenged primacy in what constitutional scholars call “police powers”—those involving the health, safety, and well-being of their citizens.

Therefore, in exercising these powers, President Joe Biden firstly has requested to the Governors - facing Covid pandemic - to require that citizens to do stay at home or getting tested. In many cases, governors across the country have stepped up to respond to these urgings and pledged to protect their states, explaining the challenges they face and providing the clarity needed by a confused and anxious citizenry.

Then, Biden has entered negotiations with the governors, managing a deal between the federal government and states governments to set policies for schools, businesses, and medical facilities. Later, governors asked President Biden to reinforce the severe economic fragilities that, partly due to the Covid pandemic, have been experienced on the American economy.

On the other hand, it is useful for both to achieve effective coordination between the federal government and the states, even though it may be the most difficult job for everyone: not surprisingly, democrats are more eager than Republicans for the new administration to robustly expand government’s role in fighting the pandemic and its economic and social consequences.

However, President Biden was undeterred and, eager to pursue his policy direction of “uniting the country”, he has focused his relationship with State Governors on three main policies: the management of the Covid pandemic; immigration and safety (and cybersecurity), and the infrastructures.

To manage these policies, he used two main legislative instruments:

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<sup>6</sup> The Council includes leaders across the Federal government: the Secretary of Defense, the Secretary of Homeland Security, the Assistant to the President for Homeland Security, the Deputy Assistant to the President for Intergovernmental Affairs, the Commander of U.S. Northern Command, the Assistant Secretary of Defense for Homeland Defense and Global Security, the Commandant of the Coast Guard, and the Chief of the National Guard Bureau. Other key Federal officials such as the Administrator of the Federal Emergency Management Agency (FEMA) are regular participants. President’s Council of Governors: Minnesota Governor Tim Walz, Co-Chair; Ohio Governor Mike DeWine, Co-Chair Delaware Governor John Carney, Louisiana Governor John Bel Edwards, Michigan Governor Gretchen Whitmer, Oregon Governor Kate Brown, Utah Governor Spencer Cox, Vermont Governor Phil Scott, Wyoming Governor Mark Gordon. The nine Governors will join Tennessee Governor Bill Lee on the council. Governor Lee’s term expires in 2022.

- (a) the “American Rescue Plan” (Public Law 117-2, 117<sup>th</sup> Congress), a Stimulus Package of a 1.9 trillion of dollars signed into law on March 11, 2021, to speed up the country's recovery from the economic and health effects of the Covid-19 pandemic and the ongoing recession.
- (b) and the “Bipartisan Infrastructure Law” or the “Infrastructure Investment and Jobs Act” (Public Law 117-58, 117<sup>th</sup> Congress): an infrastructure package of a 715 billion, to foster federal-aid highway, transit, highway safety, motor carrier, etc, and to promote funding for broadband access, clean water, and electric grid renewal for States.

Then, Biden’s approach was very shrewd to listen to the requests of the State Governors, also regarding the infrastructure 'roadmap', which was as a relevant key for Biden to “the rebuilding and strengthening of the manufacturing sector”.

Within this framework then we can highlight some elements that have emerged in the first two years alone.

As we have already mentioned, Biden, in his dialogue with governors, focused on reducing the effects of the corona pandemic.

This goal was first expressed by discussing with state governors during a phone call about a possible national requirement to wear a mask, given the increase in COVID-19 cases and deaths across the United States.

Biden said wearing a mask "is not a political statement, it's a patriotic duty" during remarks after the phone call with Republican and Democratic governors. And then he also said the federal government must provide financial aid to states to deal with the virus.

Thus, when the important meeting of the National Governors Association with the president was held in Washington on February 25, 2021, many of the issues had already begun to be defined according to some common guidelines.

This strategy to reduce the effects of Covid was based first and foremost on a bipartisan approach. Indeed, even Republicans said they appreciated the way the new administration sought to work with them on the pandemic, including through weekly calls between states and members of the White House COVID-19 task force. Thus, just within the framework of the "American Rescue Plan," an emergency aid package for cities and states, additional funding was agreed upon, through which Biden in short sought to overcome the still very heated political tensions, the effect of a very tough election campaign, including those that continued to be raised by those among the governors who questioned his election victory.

However, Biden was undeterred, and at the beginning of his speech, after calling the states “laboratories of democracy”, he stressed the need for a national approach to the pandemic and other problems, because “many of our challenges do not stop at the border of our states” thus emphasizing the need to address these problems “together, as one entity.” Also, because, although Biden has given the federal government a greater role in combating the pandemic than Donald Trump has chosen and has sought to

create a national strategy, in reality much depends legislatively on the powers of the states, that is, the governors.

Then, having stabilized policies to counter the pandemic, Biden turned his attention to addressing with governors some key policies to foster economic recovery. Many meetings were devoted to fostering economic revitalization, especially by prioritizing infrastructure policies.

Particularly noteworthy among these meetings were those that sought to broaden the economic recovery policies of the states even around issues other than those more properly and strictly related to infrastructure, such as policies related to Offshore Wind Development.

In fact, this policy was the subject of a specific letter, jointly signed by many governors (Connecticut, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Virginia), to develop wind energy off the coasts of the United States. In fact, the expansion of the offshore wind industry, according to these Governors, can create an unprecedented opportunity for the United States, enabling it to achieve significant economic development activity and build equity in coastal communities, while improving air quality and increasing opportunities for energy diversification. The importance of state and federal collaboration to realize this opportunity cannot be understated, making it necessary to address the critical areas of port infrastructure, permitting, research and development, fisheries support, and natural resource restoration and mitigation.

On the other hand, as they pointed out in their letter thanks to technological innovation, scale and competition, "the costs of offshore wind energy have decreased by more than 50 percent since 2016, benefiting both electricity users and the environment," as part of an industry that, moreover, could foster the creation of many skilled jobs and to unleash significant investment in the ports and accompanying U.S. supply chain services to build, operate and maintain this new clean energy infrastructure.<sup>7</sup>

At the same time, Biden responded to the letter, promoted in this case by Republican governors, who are opposed to the president's plan to reduce the cost, through repayment with federal taxes, of bank loans taken out by students to finance their studies at universities, especially the highest quality ones.

Indeed, twenty-two Republican governors, while declaring themselves in favor of making higher education more accessible and affordable for students in their respective states, have opposed the plan that would require the federal government to pay off student loan debt; a plan that these governors estimate would cost American taxpayers more than \$2.000 dollars each, or \$600 billion in total; a choice they do not co-divide not least because, although 16-17% of Americans have federal school debt, the plan would provide that this debt should be redistributed and paid by most taxpayers.<sup>8</sup>

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<sup>7</sup> See: *Joint Governors' Letter to the Biden Administration on Prioritization of Offshore Wind Development*, June 4<sup>th</sup> 2021.

<sup>8</sup> See: *Rep. Governors' Letter to the Biden Administration to withdraw the student loan forgiveness plan*, September 12<sup>th</sup>, 2022.

Besides these issues, however, there were others, no less important.

President Biden asked Democratic governors to protect access to abortion rights in their states after the overturn *Roe v. Wade*.

Indeed, in a virtual meeting with Democratic governors to discuss protecting access to abortion, President Biden warned that authorities in states that ban abortion can arrest women who cross state lines to obtain the procedure elsewhere—a very serious issue that affects the fundamental rights of all Americans and instead risks being increasingly marginalized. And not considered first and foremost within the legislatures of the states, which now, under the *Dobbs v. Jackson Women's Health Organization* Supreme Court's ruling, are the legislative owners of choices on the issue.

Thus, the Biden administration announced that it would protect women's access to Food and Drug Administration-approved drugs, including contraceptives and termination pills, and pledged to defend a woman's "fundamental right" to cross state lines to terminate a pregnancy.

Biden went on to urge Americans to vote for legislators who support abortion rights, in part to also overcome filibuster rules in the Senate, which could allow passage of a bill that would codify just the right to abortion. On the other hand, it should be recalled that thirteen Republican-led states have banned or severely restricted the procedure under so-called "trigger laws" after the Supreme Court overturned *Roe v. Wade* in a 6-3 decision, which precisely provides that states may not regulate abortion for any reason during the first trimester of pregnancy and may regulate abortion only to protect the woman's health during the second trimester. Instead, during the third trimester, the state may regulate or prohibit abortion to further its interest in the potential life of the *fetus*, except when abortion is necessary to preserve the life or health of the woman.<sup>9</sup>

The discussion between President Biden and the governors then also continued another very important public policy, immigration.

In fact, twenty-five governors have requested in a letter of September 20, 2021, an urgent meeting with Joe Biden to begin a dialogue on border enforcement to "end the current crisis and return to border operations that respect the laws of our land and the lives of all people, including those in our states who expect the federal government to enforce and protect our nation's borders."

This letter, which stems from the increase in apprehensions since last year considering the many attempts to cross the U.S. border, thus arises in the face of what these governors believe is a "threat" to the health and safety of migrants and Americans, and one «that can result in tremendous stress on law enforcement and border security officials. »

As such, the governors say, actions taken at the state level to address the crisis at the border have not been enough, not least because the states' ability to intervene is constitutionally limited in that the enforcement of

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<sup>9</sup> See: *President Biden to Sign Executive Order Protecting Access to Reproductive Health Care Services*, at link: <https://www.whitehouse.gov/briefing-room/statements-releases/2022/07/08/fact-sheet-president-biden-to-sign-executive-order-protecting-access-to-reproductive-health-care-services/>.



immigration laws in the United States is in the hands of the President of the United States.<sup>10</sup>

In this somewhat convulsive context, where the governors' requests to the president, in a confrontation that is certainly in any case easier than the one they had with Donald Trump, are partly woven around party political lines, and partly linked by bipartisan political lines, an increasingly strategic role in fostering greater dialogue between institutions and more unified political confrontation has been played by the Council of Governors.

In fact, in this place of political concertation, the different instances, both the institutional ones between the Presidential Administration and that of the State Executives, and the political ones, between Republicans and Democrats, came to better confront each other.

This has thus resulted in very useful common points of encounter and dialogue, such that it has fostered, mostly informally and behind the scenes, a progressive strategy of political estrangement of many Republicans from the figure of Donald Trump (though not always purely from Trumpism) and of full consolidation of many Democrats around the cause of fostering the strengthening of Republican institutions, especially after the assault on Capitol Hill of January 6<sup>th</sup>, 2021.

Thus, it was not difficult to find common lines of direction between Republican governors, Democratic governors, and the President, primarily on the digital threat posed by Vladimir Putin, even more so after the invasion of Ukraine. In fact, all of this facilitated the drafting of a letter from the President to the governors, drafted on March 18, 2022, to confront the potential cybersecurity threat from Russia, and to get a response from the Governors, through the Board of Governors, to emphasize the importance, including economic importance, to increase defences and to share concern about the strategic role of cyber resilience as a national priority, safeguarding the networks, systems, and operational technology on which the entire nation and therefore the U.S. economy itself is based.<sup>11</sup>

### 3. Some final remarks.

A few final notes may be helpful in capturing the significance of these first two very troubled years of the Biden presidency. First, there is the return, after the Trump experience, to a policy approach based on real dialogue between the President and the governors. This positive dialogue is bearing fruit, especially in fixing the economy, as several Republican governors have already said; although all this has not prevented the maintenance of those lines of political dissent, typical of a highly polarized and institutionally divided political system, primarily along the federal axis.

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<sup>10</sup> See *Letter to President Biden on Immigration Policy*, at link: [https://azgovernor.gov/sites/default/files/joint\\_letter\\_border.pdf](https://azgovernor.gov/sites/default/files/joint_letter_border.pdf).

<sup>11</sup> See: *Statement by President Biden on our Nation's Cybersecurity*, at link: <https://www.whitehouse.gov/briefing-room/statements-releases/2022/03/21/statement-by-president-biden-on-our-nations-cybersecurity/>.

In this framework, the result of the Midterm elections, which were not a political disaster for Joe Biden - on the contrary. These allow to open a new political scenario also in the relationship between the President and the Governors.

In this sense, secondly, the coming months will be decisive in defining the prospects for inter-institutional dialogue especially in the face of the still open political challenges, particularly around the states' own policies that may interfere with the outcome of the next presidential election: namely, the possibility of access to voting rights and the political reorganization of the same in the territory.

Certainly, however, Biden's strategy of continuously and constantly seeking dialogue has greatly reduced the margins of a political polarization that really risked splitting the country permanently, leading it to a second civil war.

Taking this into account, it can then be said that the United States, one year after Capitol Hill, has shown that it has more anti-bodies within itself to expend against the populist and anti-system virus than so many superficially-but understandably asserted.

It now remains to be seen whether the next two years, necessarily more dedicated to difficult and intense political confrontation in the run-up to the 2024 presidential elections, will succeed in maintaining a minimum of necessary dialogue between the same parties leading the executive branches, both federal and state; thus avoiding a return to that dangerous situation into which the experience of Donald Trump's presidency had plunged the country.

It will be difficult to disprove, however, the story of the dynamics of inter-institutional relations occurring in the last two years of a presidential term. In fact, the final period of the presidential term comes to be characterized by a rule: if the first two years one manages to maintain a positive political dialogue between institutional actors even though they are characterized by different political colour, this attitude of confrontation and dialogue decidedly diminishes in the next two years.

Hence, once again, in addition to the tone of the confrontation, the style of polarization and the magnitude of the conflict to be posed will also be decisive. Not least because at stake this time is not just the presidency but holding the entire U.S. democracy itself.

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