Biden and the Affordable Care Act: Congressional Action, Executive Federalism, State Litigation, and Program Durability

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Partisan, fractious federalism has strongly shaped the Biden administration's efforts to reverse Trump's undermining of the Affordable Care Act (ACA). In June 2021, the U.S. Supreme Court sided with Democratic, rather than Republican, state attorneys general to uphold the ACA. This enabled Biden to proceed with legislative and executive initiatives to reinvigorate the program. Biden secured passage of the American Rescue Plan (ARP), which temporarily boosted ACA enrollments. He also successfully pursued several executive initiatives to bolster the program. The victories of Democratic state attorneys general and private litigants in the courts during the Trump presidency often provided the platform for Biden's success. On balance, the ACA's vital signs have improved under Biden. But the durability of these gains depends heavily on whether Congress approves Build Back Better legislation that extends ARP benefits, and whether Biden can overcome resistance by Republican states in the courts and otherwise (especially concerning waivers).

Donald Trump's term in office represents a development that goes beyond his egregious effort to overturn the results of a presidential election. It extends to his extensive deployment of executive, rather than congressional, initiatives to transform radically myriad federal policies. Nowhere is this more evident than with the Patient Protection and Affordable Care Act (ACA), the health reform law enacted in 2010. Despite exhortations from President Trump, a Republican congress failed to repeal the law in 2017. But this failure did not stop Trump from pursuing sabotage through the tools of the administrative presidency. The administration's executive initiatives to eviscerate the ACA went beyond more conventional presidential actions to deemphasize or undercut a program (Thompson et al. 2018, 2020).

The incoming Joe Biden administration sought to reverse Trump's efforts to vitiate the ACA. On the primary campaign trail, Biden distinguished himself from most of his competitors by pledging to strengthen the ACA, rather than pursue

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Medicare for all. He continued with this theme in the general election. Upon taking office, he vigorously pursued a range of legislative and executive initiatives to rebuild and fortify the program. The fortunes of Biden's efforts were intertwined with the forces of federalism. Federal officials depended heavily on states to implement key provisions of the law. While federal officials could expect "cooperative federalism" to prevail in their dealings with Democratic governors, fractious federalism seemed sure to mark their interactions with Republican-dominated states. Biden also faced the prospect that Republican state attorneys general would resist efforts to undo the Trump administration's initiatives. As befits what has been termed the "litigation state," courts loom large in reconciling differences between the national government and the states in determining the success of Biden's initiatives to reinvigorate the ACA (Merriman 2019; Farnham 2010).

We initially assay the ACA's core provisions and the status of Trump's sabotage initiatives when Biden took office. We then describe two major forces rooted in federalism that interacted with Biden's administrative presidency—the states' role in implementing the ACA and the repeated interventions of state attorneys general in the policy process. We illuminate how Republican state attorneys general, with the support of the Trump administration, sought to destroy the ACA in the Supreme Court, only to have their Democratic counterparts successfully defend the law. The Supreme Court's rejection of this existential threat to the ACA allowed the Biden administration to proceed with legislative and executive actions to buttress the program.

We explore how Biden worked with congress to enact legislation that significantly bolstered the ACA. We then examine Biden's executive actions to reverse Trump's sabotage initiatives. These actions centered on efforts to bolster outreach and enrollment, to encourage access to Medicaid benefits for legal noncitizens, and to fend off the proliferation of health insurance plans that did not meet the ACA's quality standards. In these endeavors, state officials (especially attorneys general) were pivotal players. We then probe the contentious interaction between the Biden administration and various Republican states over program waivers. The Trump administration had approved waivers that threatened to undermine the ACA. As Biden moved to rescind or otherwise reduce the impact of these waivers, many of the affected states resisted. Concluding sections of the article discuss the implications of these findings for ACA durability and a more general understanding of federalism.

Background and the Trump Legacy

The ACA, which Republicans had sought to repeal and otherwise undermine since its passage, contains ten titles covering a cornucopia of topics. Three of its

components are central to expanding insurance coverage. First, the ACA mandates that state Medicaid programs, with certain exceptions, cover all nonelderly, nondisabled adults with incomes up to 138 percent of the poverty line. States receive federal subsidies (initially 100 percent of costs and then declining to 90 percent) to implement this provision. In 2012, the Supreme Court, in response to a suit spearheaded by Republican state attorneys general, issued a ruling making the expansion voluntary for states.

Second, the ACA under a system of partial preemption mandates establishment of state-specific insurance exchanges (or marketplaces) where individuals and small businesses can purchase insurance from participating private companies. States have the option of operating the exchanges or relying on the federal government to run them. People with incomes between 100 and 400 percent of the poverty line receive federal subsidies to buy exchange insurance. Within this cohort, those with incomes below 250 percent of the poverty level are exempt from certain deductibles and copayments. To compensate insurance companies for this loss of patient revenues, the federal government promises to provide cost sharing reduction (CSR) payments. The ACA also offers federal subsidies to insurance companies that disproportionately enroll less healthy, more medically expensive individuals. These subsidies seek to encourage insurance companies to participate in the exchanges, which in turn provide consumers more choice, while helping hold down premiums. The Trump administration had supported Republican efforts to undercut the ACA by terminating these subsidies. But this effort aborted by the time Biden took office. Insurance carriers had overcome this threat by artfully manipulating their premium charges[1] and by successfully challenging the termination of federal subsidies in the courts (Thompson et al. 2020, 53–56). To promote the emergence of "balanced risk pools" on the exchanges by incentivizing healthy people to obtain coverage, the ACA also imposed a tax penalty on those without insurance (the "individual mandate").

Third, the ACA seeks to enhance the quality of health insurance. Among other things, it requires insurers to cover ten essential health benefits (including mental health services). It forbids companies from rejecting applicants with preexisting conditions (guaranteed issue) and from charging them appreciably higher premiums than healthier enrollees paid (community rating). The ACA also prohibits insurers from imposing annual or lifetime spending caps on enrollees, thereby reducing their risk of medical bankruptcy.

Trump and the Republican congress eliminated the financial penalty for individuals who did not obtain health insurance in 2017. Otherwise, their efforts to repeal and replace the ACA failed. But this did not stop the Trump administration from pursuing an aggressive campaign to vitiate the program through executive action.

Biden Initiatives and the Forces of Federalism

Two major forces of federalism shaped the Biden initiative to restore and further enhance the ACA. The first force stemmed from the vital role states play in implementing the law. At a fundamental level, the ACA as interpreted by the courts left states with a participation decision. State policymakers could decide whether they wished to operate the insurance exchanges and whether to join the Medicaid expansion. As of January 2021, fourteen states (overwhelmingly Democratic) were fully implementing the exchanges and thirty-eight had expanded Medicaid. Among participating states, variations in implementation commitment and capacity shaped the degree to which the ACA's targeted beneficiaries enrolled as well as their access to quality care. Governors, legislators, and insurance commissioners in some states demonstrated more commitment to the ACA's goals than their counterparts in other states (Beland et al. 2016). Hence, the Biden administration's efforts to reverse Trump initiatives and reinvigorate the ACA depended partly on empowering Democratic states that shared its ideology. In contrast, the challenge that Biden faced in regard to Republican states was curbing their discretion and ability to undermine the program.

Federalism's second major force sprang from the activities of state attorneys general. The vigorous involvement by partisan coalitions of state attorneys general has markedly shaped American governance for over two decades (Nolette 2015). The legal victories of Democratic state attorneys general during the Trump administration paved the way for Biden to negate several of his predecessor's sabotage attempts. In turn, Republican state attorneys general have sought to block Biden's efforts to bolster the program. Elected on a partisan basis in forty-three states, attorneys general often act independently of other state policymakers to file suits in the federal courts. The fact that the federal judiciary has granted them "special solicitude" in determining whether they have standing to sue increases their leverage. So too does their skill in forum shopping—filing suit in a federal court more likely to be sympathetic to their cause. The willingness of the lower federal courts to issue nation-wide injunctions also bolsters the influence of state attorneys general (Thompson et al. 2020, 9–10).

The importance of state attorneys general is evident in the roles they played in posing and fending off an existential threat to the ACA before the Supreme Court early in Biden's term. This ACA case arose from a suit filed by eighteen Republican state attorneys general, two Republican governors and two Texas residents in a federal district court. The suit reasoned that, since congress in 2017 had eliminated the financial penalty for individuals' failure to obtain health insurance, the remaining mandate to purchase coverage was unconstitutional and invalidated the entire ACA.[2] Federal district court judge Reed O'Connor, a George W. Bush appointee, concurred with this view. O'Connor's decision was an epiphany for the

Trump White House. The Justice Department had originally argued that the toothless mandate remaining in the ACA invalidated only a portion of the law, primarily protections for those with preexisting conditions. Now, and against the advice of his attorney general, Trump embraced overturning all the ACA's core provisions. Subsequently, two Republican-appointed judges on the Fifth Circuit Court of Appeals (with a Democratic judge dissenting) upheld the essence of the district court ruling.

With the Trump Justice Department following the lead of Republican state attorneys general, the ACA's defense fell primarily to a coalition of Democratic attorneys general. Following the decision by the Fifth Circuit, they appealed to the U.S. Supreme Court, which heard the case just after Biden's November 2020 election. The Biden Justice Department in early 2021 declared that it no longer believed the mandate was unconstitutional and, even if the court disagreed, could be severed from the rest of the ACA. But Democratic state attorneys general played the principal role in defending the law before the Supreme Court.

In mid-June 2021, the Supreme Court announced its ruling (*California et al. v. Texas et al.*, 593 U.S.____ [2021]). Two justices, Samuel Alito and Neil Gorsuch, sided with the district court and voted to strike down the law. But seven justices ruled otherwise. The majority opinion skirted the issues of whether the remaining mandate was unconstitutional and could be severed from the rest of the law. Instead, it held that the Republican state officials and two Texas residents had not suffered the kind of "fairly traceable" injury from the ACA that gave them standing to sue. Hence, the vertical partisan coalition forged between the Trump administration and Republican state attorneys general to destroy the ACA failed. Going forward, it remained to be seen whether the Supreme Court ruling would chip away at the trend in the federal courts to give states the benefit of a doubt on claims of standing, which would have portentous implications for federalism. More immediately, the Supreme Court ruling assured that Biden's legislative and executive initiatives to strengthen the ACA could proceed.

Biden's Legislative Accomplishments

As a presidential candidate in 2020 Biden promised to reverse the Trump administration's efforts to undermine the ACA. Unlike Vermont senator and candidate for the Democratic presidential nomination Bernie Sanders, Biden did not embrace a single-payer 'Medicare-for-All' approach to health reform. Rather, he stressed fortifying and building on the ACA by creating a so-called "public option" health plan in each of the exchanges and through other measures. The public option would create an insurance plan modeled on Medicare, which would provide an alternative to private plans offered through the marketplaces. This was part of the ACA's original design in 2009, but opposition from Republicans,

conservative Democrats, and the insurance industry kept the provision out of the final law.

The creation of a public option was, however, far from Biden's central concern when he took office in January 2021. Of greater priority was the global pandemic and the threat it posed to the U.S. economy. Biden inherited a legislative legacy designed to ameliorate the pandemic's consequences. In rare moments of bipartisanship in 2020, during a period of divided government, the House Democratic majority had joined with the Republican Senate majority and President Trump to approve four significant legislative packages to ameliorate the pandemic's effects. The legislation provided myriad benefits, including direct payments to individuals, expanded unemployment insurance, and much more. Of particular relevance to the ACA, the Families First Coronavirus Response Act of March 2020 significantly bolstered Medicaid. The law authorized a 6.2 percentage point increase in the federal Medicaid match rate starting on January 1, 2020 and continuing until the end of the federally declared public health emergency. To receive this enhanced match, a state had to refrain from making Medicaid eligibility criteria more stringent or disenrolling current beneficiaries. These measures would kindle significant growth in Medicaid enrollments, so long as the public health emergency persisted.

When Biden took office, the prospects for Congress enacting another major measure to fight Covid and stimulate the economy had plummeted. The economy had fared better than many had predicted early in the pandemic, calling into question the need for additional stimulus. Moreover, the 2020 legislation had increased the federal deficit and debt to levels comparable to those experienced in World War II (Congressional Budget Office 2021). These and other factors prompted congressional Republicans to oppose additional pandemic legislation. Their opposition did not, however, deter Biden from proposing the $1.9 trillion American Rescue Plan Act, which won congressional approval in March 2021. Vice President Harris cast the deciding vote in the Senate. The House passed the bill, 220–211.

The American Rescue Plan provided a spectrum of benefits—one-time direct payments to millions of Americans, a temporary enhancement of child tax credits, an expansion of the Supplemental Nutrition Assistance Program, and more. It also bolstered the ACA. For 2021 and 2022, the new law appreciably boosted federal subsidies for those currently eligible for tax credits on the exchanges, i.e., those with incomes between 100 and 400 percent of the poverty level. For the first time it expanded eligibility for tax credits to those with incomes above 400 percent of poverty. The subsidy for this more affluent cohort kicked in when premium costs for a benchmark exchange plan exceeded 8.5 percent of an applicant's household income. An estimated 2.4 million people with incomes between 400 and 600 percent of the federal poverty level would benefit from this expansion (Rae et al.

2021). For 2021 only, the rescue plan also provided exchange subsidies for people receiving unemployment benefits. The legislation allocated $20 million to help state-based marketplaces update their systems to comply with the new law.

Along with the marketplace provisions, the American Rescue Plan included special incentives for states to join the ACA's Medicaid expansion. The law increased the federal match rate by five percentage points, from 90 to 95 percent, for any of the twelve hold-out states that would now choose to expand Medicaid. (These incentives also applied to two other states, Missouri and Oklahoma, where voters had recently approved expansions.) The increased match would apply for two years before reverting to 90 percent. Unlike the exchange provisions of the American Rescue Plan, this offer did not expire at the end of 2022 (Musumeci 2021).

A key issue for the ACA going forward is whether congress will make the exchange benefits of the American Rescue Plan permanent. In this regard, the politics of the budget reconciliation process loomed large since this process would enable Senate Democrats to dodge the threat of a Republican filibuster. In early August 2021, Democratic congressional leaders announced their support for a $3.5 trillion budget blueprint called Build Back Better which would greatly bolster the U.S. safety net, including health care. After significant budget trimming, the House of Representatives passed its version of Build Back Better in November 2021. Among other health care provisions, the bill extended the tax exchange subsidies featured in the American Rescue Plan through 2025.

From a federalism perspective, the legislation contained two provisions designed to curb or circumvent state discretion. First, it mandated that states provide twelve months of continuous eligibility for children enrolled in Medicaid and the Children's Health Insurance Program (CHIP).[3] States currently had the discretion to limit enrollment to six months for this cohort, a practice that increased the administrative burdens on parents and often reduced take-up among those otherwise eligible for program benefits. Second, Build Back Better sought to circumvent the refusal of twelve states (including such populous ones as Florida, Georgia, and Texas) to participate in the ACA's Medicaid expansion. The legislation stipulated that working-age adults with incomes below the federal poverty line and otherwise ineligible for Medicaid coverage in a nonexpansion state could sign up for generously subsidized exchange insurance in the period from 2022 through 2025. Such insurance would feature no monthly premiums and minimal cost sharing by enrollees. To discourage states that had already expanded Medicaid from switching to the federally subsidized exchanges, Build Back Better increased the federal Medicaid match rate in expansion states from 90 percent to 93 percent from 2023 through 2025. Federal policymakers also anticipated that expansion states would be reluctant to switch because the exchange option ostensibly expired at the end of 2025.

Forwarded to the Senate for consideration, the House-passed Build Back Better legislation quickly encountered difficulties. With Senate Republicans united in their opposition to the measure, Democrats had to be equally united to secure its passage. But two Democratic senators, Joe Manchin of West Virginia, and Kyrsten Sinema of Arizona, expressed reservations about the bill. In mid-December 2021, Manchin announced on Fox News that he could not support Build Back Better in its current form. The objections of the senators did not center on the bill's health care provisions. Manchin, for instance, primarily expressed reservations about its child tax credit and clean energy provisions. Stymied by Manchin, President Biden and Democratic congressional leaders promised to reshape the legislation and eventually secure its passage. But the prospects for Build Back Better in general and its health care provisions in particular remained uncertain as of early 2022. Failure to pass the legislation would undermine Biden's efforts to reinvigorate the ACA over the longer term.

Executive Action to Reinvigorate the ACA

In addition to pursuing his policy goals through congressional action, Biden mounted an aggressive administrative presidency. Within ten days of taking office, he issued an executive order announcing his intention to "protect and strengthen Medicaid and the ACA and to make high-quality health care accessible and affordable for every American." The order charged federal departments responsible for implementing the ACA—primarily Health and Human Services, Labor, and the Treasury—to "review all regulations, orders, guidance documents, policies, and any other similar agency actions" which are "inconsistent" with advancing the program. Heads of agencies were then to "suspend, revise, or rescind" these "inconsistent" practices (White House 2021a). The Biden administration's subsequent attempts to reverse Trump's initiatives and reinvigorate the ACA played out in several administrative arenas. In each, the activities of the states loomed large in shaping Biden's initiatives and their consequences.

Outreach and Enrollment: Bolstering the Exchanges and Medicaid

The Trump administration had adopted outreach and enrollment policies that reduced the number of ACA beneficiaries. In the case of the exchanges, it had severely cut funding for outreach. For instance, funding for the ACA's navigator program, which paid frontline workers to assist people in purchasing exchange insurance, shrank from $63 million in the last year of the Obama administration to $10 million in 2019 (Thompson et al. 2020, 51–52). The Trump administration also reduced the annual enrollment period from three months to a month and a half and restricted the use of "special enrollment periods" for people who had developed health problems and failed to sign up at the beginning of the year. The

Biden administration reversed course. It increased spending on the navigator grant program eight-fold for 2022 and committed an additional $50 million to other outreach (Keith 2021). The Biden administration also established a special enrollment period running from mid-February to mid-August 2021 for the federally operated exchanges. It affirmed that the regular annual enrollment period would last from November 1 through January 15 at least through 2022.

The Trump administration had also promulgated guidance which promised a rocky post-pandemic transition for state Medicaid programs. As noted earlier, legislation approved in 2020 had, as a condition for increasing the federal Medicaid match, required states to provide continuous eligibility to their enrollees. This provision triggered great increases in Medicaid enrollments. Once the President terminated the public health emergency, however, states had to do timely income-based eligibility redeterminations for enrollees or face federal fiscal penalties. This process promised to yield a sharp decline in Medicaid enrollments, with many beneficiaries now having incomes too high to qualify for Medicaid and others losing eligibility due to a failure to meet state administrative requirements for renewal (Goldstein 2022).

The Trump administration had given states six months to complete the redetermination process and allowed them to use income information up to six months old, heightening the risk of eligibility errors. The National Association of Medicaid Directors expressed concern that limits to state administrative capacity made it difficult to meet this deadline. As the Wisconsin Medicaid Director observed, "I got 40% of the workers in income maintenance who've never done a renewal. . .We need to go back and retrain . . . the 1200 workers we have on how to do the renewal the right way" (Mills-Gregg 2021). To ease pressures on state Medicaid programs and reduce prospects for a precipitous drop in program enrollments, the Biden administration gave states fourteen months after the public health emergency ended to make eligibility redeterminations. It also moved to establish a special year-round open enrollment period on the exchanges to transition those no longer eligible for Medicaid to exchange insurance (Rosenbaum 2021).

State Attorneys General Help Biden Remove the Public Charge Barrier

The Biden administration piggybacked on suits brought by Democratic state attorneys general to reverse another Trump sabotage initiative: the public charge rule. In August 2019, the Department of Homeland Security issued a rule that allowed immigration officials to consider the receipt of noncash public benefits, such as Medicaid, negatively when reviewing the requests of "legal aliens" to remain in the country. Various analyses suggested that this would lead to significant (by one estimate 15–35 percent) disenrollment among Medicaid and

CHIP beneficiaries in households with at least one noncitizen (Thompson et al. 2020; Barofsky et al. 2020).

It ordinarily takes considerable time and resources for a presidential administration to revise a federal rule. Under the Administrative Procedure Act of 1946, agencies must typically issue a proposed rule in the *Federal Register*, provide a detailed rationale for it, and give the public opportunity to comment. When the agency publishes a final rule, it must summarize the comments received and indicate why it accepted or rejected them. The federal courts have required technocratic, expert-driven justifications for rule changes rather than politically driven arguments that a new presidential administration wants to do things differently (Thompson et al. 2020, 168–169).

Despite these procedural barriers, the Biden administration reversed Trump's public charge initiative within two months of taking office. Its ability to move with such alacrity derived from successful suits against the rule brought by at least three cohorts of Democratic state attorneys general prior to the Biden presidency. The Trump administration had appealed to the Supreme Court to overturn these lower court decisions and the rule had not been officially vacated. But the legal setting for rapidly reversing the rule had been established.

Within two weeks of taking office, Biden issued an executive order stressing greater "inclusion efforts for new Americans" and distancing himself from Trump-era immigration policies (White House 2021b). Section 4 of the order called for "immediate review of agency actions on public charge admissibility." It required pertinent federal agencies to review the public charge issue and report back on "appropriate agency actions" within sixty days. The Supreme Court announced in late February that it would hear oral arguments on the Trump appeal. But soon thereafter, the Biden administration indicated it would no longer appeal the lower court rulings that had vitiated the public charge rule. The Supreme Court therefore dismissed the case in early March. Concerned that many legal immigrants might be unaware of this policy change, the Biden administration exhorted state officials to "spread the word" that enrollment in Medicaid[4] was no longer a barrier for legal noncitizens to remain in the country (Goldman 2021a).

Meanwhile, fourteen Republican state attorneys general launched a last-ditch effort to resuscitate the Trump public charge initiative. In April 2021, they applied to the Supreme Court for standing to intervene in the case, arguing that the Biden revocation would deprive states of one billion dollars in Medicaid savings. In late October 2021, the Supreme Court agreed to hear the petition, which will determine whether these attorneys general can defend the rule in the absence of the Biden Justice Department's willingness to do so (Lotven 2021a).

The States Help Biden Close off-Ramps to Lower Quality Insurance

The forces of federalism also intervened as the Biden administration strove to reverse Trump's initiatives to enhance access to substandard health insurance (Thompson et al. 2020, 56–60). The ACA mandated coverage of certain "essential" health services, protected patients from medical bankruptcies, and boosted access to insurance for those with preexisting conditions. Vowing to promote less expensive options for consumers, the Trump administration created two off-ramps from the exchanges that would increase access to coverage that did not necessarily meet these quality standards (what Democratic lawmakers called "junk insurance"). It thereby elevated the risk that healthier people would flee the exchanges in pursuit of cheaper plans leaving insurance carriers with a more expensive risk pool. This would place upward pressures on premiums, which would likely fuel declines in exchange enrollments, especially among those with incomes over 400 percent of poverty, who did not receive federal subsidies to purchase coverage.

Increased access to short-term health insurance comprised the first major off-ramp. Such coverage provided temporarily uninsured people with some protection until they could enroll on the exchanges. Concerned that lower quality short-term products not substitute for exchange insurance, the Obama administration in 2016 promulgated an administrative rule limiting their duration to three months, with the possibility of renewal for up to one year. The Trump administration issued a new rule in August 2018 indicating that such insurance could be issued for 364 days and renewed for up to thirty-six months with some possibility of extending it still further.

In hearings before Congress in mid-2021, Biden's newly appointed Secretary of Health and Human Services, Xavier Becerra agreed that the short-term policies were "junk" and pledged to revise the Trump rule (Turner 2021). Unlike the case with the public charge rule, however, the Biden administration could not piggyback on successful litigation, Private litigants—advocates for those with mental health problems, maternal care needs, or expensive health care conditions (e.g., HIV)—had sued to overturn the short-term plan rule, but a federal district and appellate court upheld the Trump regulation. This left the Biden administration with the time-consuming task of reversing Trump's policy through the federal rulemaking process. Meanwhile, however, state insurance regulators helped the Biden administration mitigate some of the likely damage to insurance quality wrought by the short-term rule. About half the states, including California and New York, used their regulatory authority to curtail sales of these short-term plans (Blase 2021).

The promotion of association health plans comprised the second key off-ramp to cheaper, lower quality insurance promoted by the Trump administration. Regulated for decades by the Employee Retirement and Income Security Act

(ERISA), these plans gave smaller employers an opportunity to form an association that could purchase health insurance. As part of a larger group, the small firms could obtain better insurance deals than if they tried to purchase coverage on their own. The Obama administration interpreted ERISA to mean that only plans that met certain narrow criteria would be exempt from the ACA's quality standards. In June 2018, the Trump administration issued a rule that expanded these criteria, opening the gates to association plans that did not comply with ACA standards.[5]

The Biden administration again benefitted from prior litigation brought by Democratic state attorneys general to thwart this Trump initiative. In response to a suit filed by eleven Democratic state attorneys general and the District of Columbia, a federal district court in March 2019 vacated the ERISA rule. The Trump administration appealed this decision to the DC circuit court, which heard oral arguments in November 2019. But the appellate court delayed a ruling and in early 2021 gave the Biden Justice Department an opportunity to decide whether it would continue the appeal (Lotven 2021b). While the Justice Department had not responded to the circuit court by early 2022, it seemed likely that the Biden administration would decline to appeal the district court ruling and that the Trump ERISA rule would die.

Reversing Waiver Approvals: A Contentious Challenge

Federal waivers to states have been central to the intergovernmental fabric in the health care arena for over three decades. Two kinds of waivers loom large in ACA's evolution—Medicaid initiatives under section 1115 of the Social Security Act and insurance exchange modifications under section 1332 of the reform law. Authorized in 1962, the 1115 waiver provision allowed federal officials to approve state Medicaid demonstrations that depart substantially from statutory requirements. As of 2020, over 90 percent of states had 1115 waivers and approximately one-third of federal Medicaid expenditures supported waiver-based activities (GAO 2019). Section 1332 of the ACA empowers states as of 2017 to propose waivers featuring innovative alternatives for achieving the law's goals. As interpreted by the Obama administration, these waivers had to provide services that were at least as comprehensive and affordable as the ACA. They also had to insure at least a comparable number of state residents and not add to the deficit.

Waivers frequently reflect bottom-up state initiatives. But presidential administrations from Clinton to Biden have also attempted to use waivers to serve their policy objectives. Presidents cannot, of course, force states to pursue waivers they espouse. But, especially in a polarized time, where state politics increasingly reflects national themes (Hopkins 2018), they can often count on some states controlled by their own party to respond favorably. The administrative presidency has three main formal opportunities to shape waivers. First, a

presidential administration has a well-established right to accept or reject waiver proposals that states submit. Second, an administration may use the renewal process to significantly modify or terminate a waiver. Waivers usually have time limits, often five years. While states and various interest groups may apply considerable political pressure to continue a waiver, the renewal process provides a formal opportunity for a presidential administration to modify or stop it.

Finally, a presidential administration may rescind a waiver prior to it coming up for renewal. This approach typically stokes the most intergovernmental conflict and presents the greatest risk of presidential failure. Formal procedural requirements slow down efforts to terminate waivers. Typically, a state will get a notice and opportunity for a hearing if CMS moves to rescind a waiver. The state can also formally appeal the decision to a Department of Health and Human Services board. The Trump administration added to these procedural barriers during its waning days in office. For instance, it affirmed that existing demonstrations had to continue for at least nine additional months before being rescinded. In justifying the move, CMS Administrator Seema Verma stated: "We want to make sure that people don't come into office and on a political whim, terminate waivers" (Kliff and Sanger-Katz 2021). Opponents blasted the new formal arrangements as a "thinly veiled power grab intended to constrain the new (Biden) administration" (Stein 2021a). States may also sue the federal government to block revocation of a waiver.

The Trump administration's aggressive promotion and approval of waivers that undercut the ACA pushed the challenges of reversing them to center stage for the Biden presidency. To a much greater degree than prior presidents, the Biden administration felt compelled to rescind existing waivers. More specifically, the Biden administration moved to counteract waivers that imposed work requirements on the Medicaid expansion cohort, reduced pressure on Texas to expand Medicaid, fostered a Tennessee "block grant," and permitted Georgia to abandon the federal insurance exchange.

Reversing Work Requirements Waivers with Help from Private Litigants

The Trump administration forged new Medicaid waiver themes that were likely to depress enrollments in the program. These themes above all emphasized work or community engagement requirements for able-bodied, nonelderly adults seeking Medicaid benefits (primarily the ACA's expansion cohort). They also stressed greater cost sharing and other requirements that increased administrative and other burdens on Medicaid applicants and beneficiaries. While the Biden administration moved to curtail state requirements for cost sharing,[6] its efforts to revoke work requirement waivers sparked more intergovernmental tension.

As of 2021, ten Republican states had work requirement waivers in place[7] and several others had such waiver requests pending with CMS. The federal courts had, however, essentially halted implementation of these waivers. Advocacy groups in several states (e.g., the Southern Poverty Law Center) had persuaded federal district and appellate courts that the waivers violated Medicaid law. Faced with these defeats, the Trump administration joined Arkansas and New Hampshire in appealing to the Supreme Court, which agreed to hear the case. Seventeen Republican state attorneys general filed an amicus brief supporting the Trump administration's effort to overturn the lower court rulings invalidating work requirements.

Upon taking office, the Biden administration informed the Supreme Court that it no longer wished to appeal the lower court rulings that had blocked the waivers. But Arkansas argued that the Supreme Court should hear the case because it would have implications for any subsequent effort to rescind the state's work requirement. The Supreme Court partly accommodated both the Biden administration and Arkansas. The court cancelled the date for oral argument on the waivers but kept the case on its docket with the possibility of returning to it later (Stein 2021b).

Building on the efforts of private litigants, the Biden administration moved to rescind the work requirement waivers. In early February 2021, CMS expressed doubts that work requirement waivers advanced the program's objectives and gave states with these waivers thirty days to reply (Stein 2021c). While most of the contacted states responded by defending work requirements, the Biden administration over the next twelve months rescinded them in ten states—Arizona, Arkansas, Georgia, Indiana, Michigan, New Hampshire, Ohio, South Carolina, Utah, and Wisconsin. It remained to be seen whether the courts would subsequently resuscitate work requirements. In January 2022, for instance, Georgia sued in federal district court claiming that its work requirements waiver differed from those in other states because it increased the numbers eligible for Medicaid. The state claimed that federal law "provides CMS with no authority whatsoever to rescind, withdraw, or reconsider an approved demonstration." It also charged that the CMS rescission was an attempt to "coerce" Georgia into "an unconditional Medicaid expansion" (US District Court 2022, 23, 35).

The Struggle to Rescind the Texas Demonstration Waiver

The Biden administration also attempted to revoke a Texas 1115 waiver. In 2011, Texas officials had won approval for a demonstration that expanded managed care and established Medicaid funding pools for hospitals to help defray the uncompensated care they provided. The state had the highest rate of uninsured residents in the country and had refused to expand Medicaid under the ACA. The

uncompensated care pool sought to mitigate the problem of limited insurance coverage and to vitiate the fiscal incentives hospitals might otherwise have to lobby for a Medicaid expansion. Eager to incentivize states to expand Medicaid, the Obama administration had sought to reduce and eventually phase out the uncompensated care pool in Texas and certain other nonexpansion states. Upon taking office, the Trump administration reversed course and increased Medicaid funding for these pools (Thompson et al. 2018).

The Texas waiver was due to end in 2022. But, eager to obtain an extension with a sympathetic president in office, Texas filed an early renewal request in 2020. In its race to get an approval out the door before Trump left office, CMS departed from the requirement that 1115 waiver proposals go through two public notice and comment periods—one at the state level and one by CMS nationally. While Texas attempted to meet the state requirement, CMS did not implement a national comment period on grounds that the Covid pandemic justified emergency action. To further buffer the waiver from review by subsequent presidential administrations, CMS renewed the waiver for ten years rather than the customary five.

In April 2021, the Biden administration rescinded the approval of the extension. While the White House had concerns that the waiver undercut incentives for Texas to expand Medicaid, CMS based its decision on procedural grounds. The agency argued that the Trump administration had not adequately justified its failure to meet public notice and comment requirements. It noted that Texas could still seek renewal of the existing waiver in 2022 when it was due to expire.

The Biden administration's recission precipitated resistance by Republican office holders. Senator John Cornyn of Texas sought to pressure the administration to modify its waiver decision by blocking Senate approval of Biden's nominee for CMS administrator, Chiquita Brooks-La Sure. While Cornyn ultimately failed, his action delayed approval of her appointment until May.

Meanwhile, Texas state officials resisted in three ways. First, the Republican state attorney general sued CMS in a Texas federal district court. Claiming that "federal authorities may not topple a State's Medicaid system as a child might a sandcastle," the state argued that neither the Social Security Act nor federal administrative code "empower the federal government to rescind a demonstration project." Once the Secretary of Health and Human Services authorizes such a project there could be "no take-backs." The suit further claimed that CMS "had an ulterior motive in rescinding the extension: to force Texas to adopt the Medicaid expansion" (U.S. District Court 2021, 29). Second, Texas formally requested that an appeals board in the Department of Health and Human Services overturn the revocation. Finally, Texas in July 2021 resubmitted the same waiver proposal to CMS that the Trump administration had approved in January so that it could undergo a public notice and comment period at the federal level. In August, the

district court temporarily blocked the CMS recission until the courts could decide the merits of the case. As of early 2022, the degree to which the Biden administration would succeed in modifying the hospital subsidy system that undercut incentives for Texas to expand Medicaid remained an open question.

Coping with the Tennessee "Block Grant" Demonstration

In addition to the work requirement and Texas waivers, the Biden administration wrestled with what to do about an 11th-hour waiver approved for Tennessee. Republican policymakers had for decades sought to convert Medicaid from a fiscal entitlement to the states to a capped "block" grant (Miller et al. 2021). As an entitlement, CMS matched with federal funds at a specified rate whatever a state chose to spend on Medicaid. In contrast, block grants set a limit on the amount the federal government provides in exchange for affording states greater flexibility in how they spend Medicaid dollars.

The Trump administration invited states to submit waiver proposals that capped the federal contribution. This initiative proved less popular among state Republican policymakers than the work requirement waivers. But twelve days before Trump left office, CMS approved a Tennessee waiver of this type. In exchange for accepting an "aggregate cap" on federal Medicaid spending, Tennessee gained new authority to shape the services it provided. If state Medicaid spending came in under the cap, the state could allocate just over half the savings to other health services. If the state exceeded the cap it would have to cover the overage from its own revenues. Tennessee's Republican Governor Bill Lee described the new waiver as a "legacy achievement" (Sanger-Katz 2021). For her part, CMS Administrator Verma asserted that "this carefully crafted demonstration could be a national model moving forward" (Center for Medicaid and CHIP Services 2021). As in Texas, CMS approved the waiver for ten years rather than the customary five to help ensure its durability.

In April 2021, the National Health Law Program, the Tennessee Justice Center, and thirteen Medicaid beneficiaries from Tennessee sued in federal district court to overturn the waiver. Among other things, they charged that CMS had violated procedural requirements concerning opportunities for public comment prior to its approval (Stein 2021d). In August 2021, the Biden administration opened a new thirty-day public comment period on the Tennessee waiver. Hoping that this would lead CMS to rescind approval of the waiver's spending caps, those challenging the waiver in court agreed to hold their suit in abeyance (Stein 2021e).

Reining in Georgia's Waiver to Escape the Exchanges

The Biden administration's concerns with reversing Trump waivers also extended to those authorized under Section 1332 of the ACA. This section empowered states

as of 2017 to pursue innovative alternatives to achieving the law's goals. As noted previously, the Obama administration had established "guardrails" to limit state discretion to undermine the ACA. In October 2018, the Trump administration greatly weakened these guardrails under the banner of promoting "State Relief and Empowerment Waivers."

While Republican states generally displayed little interest in using 1332 waivers to create the administrative infrastructure needed to depart from the ACA's insurance template, Georgia seized the opportunity. In November 2020, the state won approval as of 2023 to exit from the federal enrollment system embedded in the exchanges (with its federal Healthcare.gov portal). This would make Georgia the only state without a single one-stop-shop marketplace for individuals seeking coverage. Instead, consumers would transition to a highly decentralized enrollment system reliant on private brokers and insurance companies to sign them up. Georgia officials argued that this exit to the commercial market would allow Georgia residents to review the full range of health insurance options, *including plans that did not meet the ACA's quality standards*. Moreover, the waiver opened the door to the possibility that brokers might have financial incentives to steer enrollees to such lower quality coverage (Keith 2020). In January 2021, the Trump administration doubled down on its initiative with an administrative rule that allowed states to abandon the exchanges and rely on private enrollment agents in the marketplaces without a waiver starting in 2023.

Democratic critics in Congress denounced the Georgia waiver, warning that it would depress exchange enrollments and "expose consumers to financial risk by encouraging the use of junk plans" (Lotven 2020). And once again private litigants turned to the courts to block state action. In early January 2021, advocates for planned parenthood and women's health services sued to stop implementation of the Georgia waiver claiming that "more than 100,000 Georgians stand to lose their insurance if this waiver is allowed to stand" (Lotven 2021c).

Meanwhile, the Biden administration in June 2021 proposed an administrative rule to reverse the Trump initiative, making it more difficult for states to exit the exchanges or otherwise water down ACA coverage. CMS also laid the groundwork for rescinding the Georgia waiver. In June, the agency directed Georgia officials to redo the actuarial and economic analysis they had used to support its waiver request and resubmit these findings within one month (Lotven 2021d). A month later, however, Governor Brian Kemp, a Republican, declined to comply and questioned whether federal officials had the authority to reopen issues related to the waiver (Lotven 2021e). Hence, efforts to rescind or otherwise modify the Georgia waiver seemed likely to fuel considerable intergovernmental conflict with the federal courts substantially determining whether the Biden administration prevails.

Implications for ACA Durability

The first year of the Biden administration witnessed legislative and executive progress in bolstering the durability of the ACA. Congressional passage of the American Rescue Plan Act enhanced prospects for greater ACA enrollments at least through 2022. The Biden administration also forged several executive initiatives to reinvigorate the program. Thanks to the courts, two of Trump's sabotage initiatives were well on their way to reversal by the time Biden took office. Insurance companies had successfully sued to block Republican efforts to cut off their ACA subsidies. So too, Democratic state attorneys general had prevailed over their Republican counterparts in persuading the Supreme Court to preserve the ACA.

Certain of the remaining Trump initiatives proved easy for the Biden administration to reverse. The Biden administration quickly expanded and promoted exchange enrollment opportunities. Piggybacking on the court victories of Democratic state attorneys general, the Biden administration derailed the Trump administration's public charge and association health plan rules. So too, the Biden administration built on the success of private litigants in the courts to rescind the work requirement waivers. In other areas, however, Biden still had appreciable work to do in reversing Trump's initiatives as of early 2022. With the regulation expanding short-term health plans having survived a court challenge, the Biden administration faced the time-consuming task of using the federal rulemaking process to revamp the rule. So too, waiver politics proved challenging. It remained unclear whether the Biden administration would realize its preferences in dealing with the Georgia, Texas, and Tennessee waivers that Trump had approved. Moreover, current and potential court challenges by Republican state attorneys general and others threatened to undermine Biden's executive efforts to bolster the ACA.

Still, Biden's first year in office featured improvement in the ACA's vital signs. Kaiser (2021a) tracking polls indicated that about 55 percent of American adults viewed the ACA favorably, with slightly under 40 percent holding negative views. Moreover, Republican efforts to repeal the law under Trump had awakened supporters to the ACA's benefits and motivated them to defend it (Jacobs and Mettler 2020). While most Republicans continued to oppose the ACA, their opposition was less intense and salient to their partisan identities. The repeal of "Obamacare" had ceased to be a dominant Republican rallying cry at election time.

Developments with respect to the insurance exchanges also pointed to enhanced ACA durability. The ACA rested on the federalism principle of partial preemption. States could opt to run the exchanges. If they refrained, the federal government would. When Biden took office, fourteen states and the District of Columbia fully operated the exchanges. These states were primarily dominated by Democratic policymakers sympathetic to the ACA who also felt confident in their state's

administrative capacity to operate the marketplaces. In October 2021, Kentucky, Maine, and New Mexico (all with Democratic governors) joined the ranks of fully participating states. Three other states relied on the federal enrollment portal but otherwise ran the marketplaces. While some Republican-dominated states had agreed to partner with the federal government to operate the exchanges most shunned full participation. Ironically, their reluctance to operate the exchanges impeded the Trump administration efforts to remake the marketplaces through Section 1332 waivers. With the sole exception of Georgia, Republican states displayed little interest in being "empowered" through waivers to take on the arduous administrative task of replacing the federally run exchanges in their jurisdictions.

Other exchange vital signs also trended upward under Biden. The average number of insurance companies participating in the exchanges rose from a low of 3.5 in 2018 to five in 2021 thereby expanding choice for enrollees and increasing market competition (McDermott and Cox 2020). So too, premium rate changes by the insurance companies in 2021 and 2022 tended to be moderate with increases or decreases of a few percentage points (Ramirez et al. 2021). More fundamentally, four years of marketplace enrollment declines under Trump ended. Sign-ups for exchange insurance for 2021 rose to over 12 million, a five percent increase over the preceding year; increases continued in 2022 with more than 14 million signing up (Kaiser Family Foundation 2021b; Lotven 2022).

Medicaid and CHIP enrollments also reached new highs during Biden's first year rising to over 80 million (Kaiser Family Foundation 2021c). An estimated 20 million of these beneficiaries had gained coverage due to the ACA's Medicaid expansion (Lotven 2021f). As noted previously, 2020 stimulus legislation largely accounted for this growth. But it also stemmed from the willingness of more states to participate in the ACA's Medicaid expansion. Despite Trump's opposition to the ACA, the number of participating states grew from thirty-one to thirty-eight during his presidential term (plus the District of Columbia).

Even with these developments, however, a substantial "Medicaid coverage gap" persisted. This gap consisted of some 2.2 million poor people in the twelve non-expansion states who did not qualify for ACA coverage under either Medicaid or the exchanges (Garfield et al. 2021). Biden's American Rescue Plan boosted the fiscal incentives for hold-out states to expand Medicaid to working-age adults. But Republican ideological resistance suggests that the effects of this legislation will be limited at best.[8] In 2021, for example, Democratic Governor Tony Evers in Wisconsin called a special session of the state legislature to consider a Medicaid expansion only to have Republican legislative leaders open and adjourn the session within seconds (Goldman 2021b). Republican resistance to the expansion testifies to the limits of generous federal fiscal incentives as a tool for shaping state policy, especially under conditions of intense partisan polarization. This resistance

accounts for provisions in the Build Back Better legislation approved by the House that would substitute federal exchange coverage of the poor for Medicaid in the twelve nonexpansion states.

While Biden administration initiatives have bolstered the ACA, challenges to its durability persist. If the Build Back Better legislation fails to pass, appreciable enrollment declines on the exchanges would likely occur in 2023. The effort to provide exchange coverage to the poor in states that have not expanded Medicaid would collapse. The end of the public health emergency will also cause Medicaid enrollments to drop and likely create take-up challenges for ACA's expansion cohort. Additionally, it remains to be seen whether Republican state attorneys general will derail certain of Biden's initiatives to resuscitate the program. Should Republicans reclaim the White House in 2024, a form of executive federalism would likely emerge that permits and often encourages states to pursue actions that undermine the ACA. As under Trump, Democratic state attorneys general and private litigants would be front and center in seeking to defend the program in the courts.

Conclusion

ACA developments under Biden manifest the continued presence of "fractious" (Haselswerdt 2021; Thompson and Gusmano 2014), or "partisan" (Bulman-Pozen 2014) federalism in American governance. This form of federalism features a more ideological model of intergovernmental relations where the partisan identities of actors drive their behavior and often overshadow more pragmatic considerations. Such federalism means that state and national policymakers tend to forge vertical partisan coalitions to advance their common goals. For state officials, considerations about the advantages and disadvantages of implementing a federal program are often secondary to their interest in promoting their party's national political agenda. Partisan federalism also triggers a dynamic where, as Bulman-Pozen notes (2014, 1080), "Republican-led states challenge the federal government when it is controlled by Democrats, while Democratic-led states challenge the federal government when it is controlled by Republicans." States thereby become pivotal sites of partisan support and opposition to the national government with roles changing depending on whichever party holds power in Washington. This model of fractious partisan federalism does not, of course, invariably apply. Some Republican states have for instance, cooperated with federal officials in implementing the ACA. Other intergovernmental issues are of low partisan salience. But, as the transition from the Trump to the Biden administration in the case of the ACA vividly suggests, a conflictual partisan pattern of intergovernmental relations will often dominate.

Within the context of fractious, partisan federalism, the initial period of the Biden administration underscores two conclusions concerning the dynamics of American federalism. First, the forces of executive federalism loom large in shaping who benefits from federal programs. The actions of executive branch officials at the national and state level do much to shape the intergovernmental fabric with the administrative presidency being especially important. To be sure, congressional action can matter greatly as the American Rescue Plan Act and the potential approval of Build Back Better attest. But even with legislative triumphs (and even more without them), presidents have substantial incentive to pursue their agendas through executive initiatives. More than any other actor in the political system the public holds presidents responsible for developments in government, the economy, and broader society. Faced with these pressures, and with congress often gridlocked, presidents use executive initiatives to demonstrate leadership and accomplishment. Frequently, presidents deploy a mix of carrots, sticks, and exhortation to entice states and localities to promote their national agendas.

To an unprecedented degree, for example, the Trump administration's waiver policies sought to empower its partisan allies in state government to pursue actions that would vitiate the ACA. Many states welcomed the invitation, especially in the case of the work requirement waivers. The Trump administration also embraced the efforts of Republican state attorneys general to weaken and ultimately destroy the ACA. In turn, the Biden administration sought to constrain the discretion of conservative states to undercut ACA implementation. To an uncommon degree, it sought to rescind Trump administration waivers rather than modify or reject them when they came up for renewal. In turn, successful court action challenging Trump's initiatives by Democratic state attorneys (and at times private litigants) allowed the Biden administration to get out of the gates quicker with its executive actions to reverse Trump's ACA policies.

Second, any assessment of the balance of power between the national government and the states under fractious partisan federalism should factor in the rising importance of state attorneys general and the federal courts (e.g., Nolette 2015; Yozwiak et al. 2021). Students of federalism have long noted the power states accrue when they implement national programs. The growing importance of waivers in the structure of federalism since the 1990s has reinforced this pattern. This long-recognized source of state influence has over the last two decades been appreciably augmented by the rise of the partisan "litigation state" (Merriman 2019). The litigation state features frequent, aggressive, well-resourced actions by state attorneys general, often in multi-state partisan coalitions, to shape or derail national programs in the courts. It also features a willingness by federal courts to grant states special standing to sue. Of course, state attorneys general also defend state policy in their respective jurisdictions against litigation. Their lack of success in defending work requirement waivers in several states made it easier for the

Biden administration to rescind them. Elected in forty-three states, attorneys general at times pursue legal action in tension with the policies approved by governors and legislators in their states. For instance, several Republican state attorneys general joined the suit to destroy the ACA even though they came from states where Republican lawmakers support the Medicaid expansion.

In general, federal courts have become less "permissive" of federal initiatives in the health care arena (Morone 2020). Lower-level courts have readily issued national injunctions. Responding to a suit brought by Republican state attorneys general and others, the Supreme Court made the ACA's Medicaid expansion voluntary rather than mandatory for states in 2012 (*NFIB v. Sebelius*, 567 U.S. 519 [2012]). This decision undermined the long-established principle that the national government had broad authority to impose requirements on states accepting federal grants. So too, pending court decisions concerning the Georgia and Texas waivers could greatly constrain the federal government's ability to revoke a waiver it had previously approved. Responding to suits brought by Democratic state attorneys general, the courts blocked several sabotage initiatives of the Trump administration. In the new rendition of the "war between the states," the Supreme Court sided with Democratic state attorneys general rather than their Republican counterparts to uphold the ACA. The evidence from the first year of the Biden administration suggests the continuation of the partisan litigation state. While the Biden administration has made considerable headway in reversing Trump's ACA initiatives, Republican state attorneys general have pledged to block many of his actions. The success of Biden's efforts to reinvigorate the ACA resides substantially with the courts.

Notes

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1. The carriers practiced "silver loading" whereby they increased their premiums on plans the federal government used to establish the amount of the tax credits subsidized individuals would receive. The sharp premium increase did much to compensate the companies for the foregone federal subsidies. Meanwhile, the larger tax credits prevented those with incomes from 100 to 400 percent of poverty from being priced out of the exchanges.
2. In *NFIB et al. v. Sebelius et al.* in 2012, the Supreme Court had declared a mandate unconstitutional but interpreted the ACA penalty for not having insurance as a tax.
3. The Children's Health Insurance Program gives grants to the states that primarily cover children from families with incomes above the Medicaid eligibility threshold.
4. The one long-standing exception to this policy is receipt of Medicaid long-term institutional care.

5. For instance, the rule expanded the definition of "employer" to include individuals who were "working owners" with no employees. This group of self-employed people had previously had to seek insurance in the "individual market" where the ACA's quality requirements applied.
6. To entice states to expand Medicaid, the Obama administration had also approved waivers that allowed states to impose premiums on enrollees. The Biden administration signaled its intention to phase out these waivers.
7. States, such as Kentucky, had earlier obtained approval for work requirement waivers but subsequently withdrew them when Democratic governors took office.
8. As Haselswerdt (2021) notes, more recent Medicaid expansions in Republican states have stemmed from voter ballot initiatives, rather than from the softening of ideological opposition among state legislators.

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