

**West Virginia Attorney General’s Office Analysis  
of the Biden Administration First 100 Days:  
Executive Orders and Suits by States**

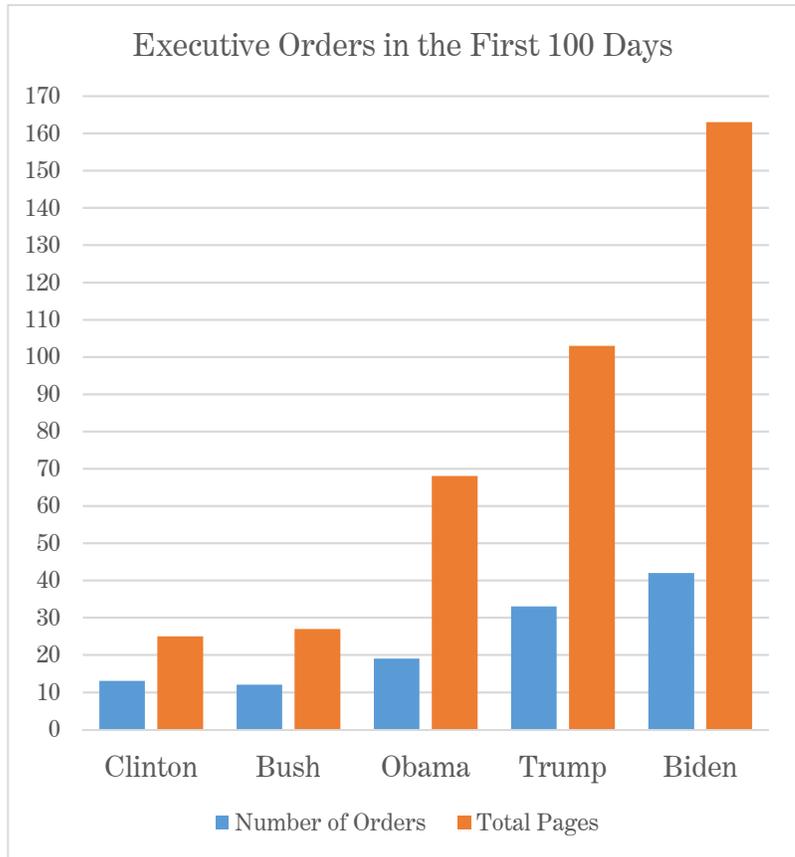
In his inaugural address, President Biden declared that “[h]istory, faith, and reason show the way, the way of unity” and that “without unity, there is no peace, only bitterness and fury.” However, in the first 100 days of his administration, President Biden issued an unprecedented flurry of executive orders. In response, States have filed an equally unprecedented number of lawsuits against him. This analysis details the unusual extent of Biden’s executive orders and suits against him filed by States during the first 100 days.

According to West Virginia Attorney General Patrick Morrisey, the analysis shows “Biden’s actions represent the opposite of unity and a failure to deliver on his promise of bipartisanship.” He added: “As we said when he took office in the letter to President Biden from State Attorneys General led by West Virginia, ‘we will not hesitate to step up to the plate when our States are harmed.’ While President Biden has not lived up to his promise of moderation, we lived up to our promise that we will defend our States against presidential malfeasance.”

In the first 100 days, no recent President came close to the number and volume of executive orders issued by President Biden.

**Executive Orders in the First 100 Days**

Clinton	13 Executive Orders	25 pages
Bush	12 Executive Orders	27 pages
Obama	19 Executive Orders	68 pages
Trump	33 Executive Orders	103 pages
Biden	42 Executive Orders	163 pages



Using executive orders to make major policy changes without Congress or the bare minimum notice and comment procedures for reasoned executive rulemaking is a recipe for divisive mistakes, not unity. Unsurprisingly, as a direct result of the President Biden's hasty and divisive unilateralism, States have already, in just the first 100 days, filed an extensive array of lawsuits against the administration for violations of federal laws and arbitrary and capricious executive actions, such as killing the Keystone XL pipeline and halting all fossil fuel leasing on federal lands.

By comparison, President Trump was sued by States during his first 100 days only twice, both relating to the same policy regarding restrictions on immigration from certain countries into the United States. *See Washington v. Trump*, W. D. Wash., No. 17-141 (Jan. 30, 2017); *Hawai'i v. Trump*, D. Hawaii, No. 17-50 (Feb. 3, 2017).

President Biden was sued by States in his first 100 days at least 18 times over 13 different divisive policies:

- **Violation of Immigration Enforcement Agreement**
- **Census Data Release Delay**
- **100 Day Removal Pause**
- **Social Cost of Carbon Order (2 lawsuits)**
- **Keystone XL Pipeline Revocation**
- **Federal Fossil Fuel Leasing Moratorium**
- **Tax Cut Ban (4 lawsuits)**
- **Criminal Alien Custody Refusal (2 lawsuits)**
- **Termination of Border Wall and Remain in Mexico Policy**
- **Migrant Protection Protocols Revocation**
- **Indefinite Cruise Ship Ban**
- **Disregard of COVID-19 Immigration Restrictions**
- **Mount Rushmore July 4th Restrictions**

In addition, after President Biden issued a sweeping and radical commitment under the Paris Agreement that the United States will cut greenhouse gas emissions in half in just a few short years by 2030, 19 States led by West Virginia responded swiftly by filing a petition for writ of certiorari in the United States Supreme Court on a key legal issue that could cut off at the pass any attempt to impose Biden's climate agenda by executive fiat. The States urge the Supreme Court to take up and reverse a lower court decision that would give EPA virtually unlimited authority to "decarbonize" the American economy. The first 100 days of Biden's administration has shown that the country cannot afford to give such expansive powers to the President.

The unprecedented reliance on executive orders and the number of lawsuits filed by States and other key legal actions in the first 100 days stands in stark contrast to promises of “unity” made by President Biden in his inaugural address and during his campaign. Over use of executive orders to make policy instead of working with Congress is an indication of a divisive agenda, and failure to even engage in notice and comment rulemaking before taking significant executive action reflects undue haste and an unfortunate closed-minded disregard for public input.

Under the Constitution, States harmed by executive unilateralism can seek redress in federal court. As their State’s chief legal officers, Attorneys General will play a key role in providing a “check” on the Biden Administration going forward, just as they have already in the first 100 days.