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Finley: Biden agenda targets federalism

Nolan Finley The Detroit News

Published 11:00 p.m. ET Mar. 17, 2021

With every new Democratic administration comes another assault on federalism, the principle that government works best when decisions are made closest to the people affected by them.

President Joe Biden came into office looking to grow the dominance of the federal government over states and local communities.

The first several pieces of his agenda reflect a disdain for the rights of the individual states to establish rules for living that reflect the desires and values of their citizens.

And as is typical of Big Government types, Biden is coaxing the states to sell him their birthright with fat federal checks.

The massive COVID-19 relief bill floods Michigan with cash — the state government is getting \$5.6 billion and local communities \$4.4 billion. Combined, that's almost equal to the entire state General Fund budget.

And most of it has strings attached.

To get the money, states must promise not to cut taxes, even though they may find themselves with far more money than they can responsibly spend.

"My jaw dropped over that one," says Walter Olson, a policy expert with the Libertarian CATO Institute. "I don't remember any earlier federal act that said states could not cut taxes. As soon as I saw that I thought, 'Supreme Court to the rescue.'"

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And that's where much of the fight to preserve federalism will play out. With three new conservative justices, the expectation is this court will rein in Biden's worst expansionist instincts,

although Chief Justice John Roberts wobbled on protecting states rights in the Obamacare decision.

Past courts have ruled the federal government can not order states to create new bureaucracies. That will be tested with HR-1, the sweeping elections bill aimed at enshrining a long-term Democratic majority in Congress.

The bill would require states to replace their current method of drawing political districts with independent redistricting commissions, if they haven't done so already (Michigan has). It also would allow felons to vote once they're released from prison, contrary to the law in many states.

Olson says while Congress can only set rules for federal elections, most states would feel compelled to go along to avoid having to hold separate elections or issue different ballots for state contests.

An alternative would be to hold state elections on odd-numbered years away from federal balloting.

Paul Moreno, dean of social sciences at Hillsdale College, also sees an insult to federalism in the PRO Act, the Democratic payoff to Big Labor that would make organizing workplaces easier and set aside right-to-work laws in states like Michigan.

Although since the Wagner Act of 1935 labor law has largely been the purview of the federal government, states have maintained some room to set their own local rules. The PRO-Act would close that door.

The Supreme Court in the 2018 Janus decision protected government employees from compulsory union dues. If the PRO Act passes, the court will likely get the chance to weigh whether employees in the private sector should enjoy that same right as well.

The biggest threat to federalism comes from the concentration of spending power in Washington. Of all the taxes paid by Americans, 64% goes to the federal government, and 36% to states and local communities.

Washington can also add to its pool of money by using its credit card, as it did with the \$1.9 trillion COVID relief package. That gives it tremendous leverage in bringing states to its will.

"The way federalism has suffered the most is spending power," Moreno says. "Congress buys the compliance of states to do the things Congress can't do itself. The federal government can attach any kind of conditions it wants to the money it gives to the states."

Congress has been most effective at forcing cash-starved local schools to embrace a federal agenda or risk losing funds. That will escalate should the Civics Secures Democracy Act pass. It seeks to impose on states a national curriculum that teaches a far-left version of history.

Federalism, Moreno says, is the most important structural feature of the Constitution. And while its virtue as a tool against an all-powerful central government is most often touted by conservatives, it has served progressive interests as well — the federal courts rebuffed Donald Trump's crackdown on sanctuary cities, for example.

Preserving federalism is essential to maintaining the foundational promise that the people control the government, and not the other way around.

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