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POLICY TRANSFORMATION THROUGH EXECUTIVE BRANCH ACTION

In early June 2018, the Justice Department announced it would not defend key provisions of the Patient Protection and Affordable Care Act (ACA, or Obamacare) from a suit seeking to overturn the law in a federal district court. Specifically, the Trump administration refused to back provisions of the health reform law that guaranteed Americans with preexisting conditions, such as high blood pressure, diabetes, or cancer, access to insurance at premiums comparable to those paid by healthier people. Democrats in Congress denounced the Trump administration for failing to defend the law, as the Obama administration had done. And Republican Senate Majority Leader Mitch McConnell asserted: “Everybody I know in the Senate—everybody—is in favor of maintaining coverage for preexisting conditions.”¹ Nine months later, before a federal court of appeals, the Trump administration changed its position to argue, despite opposition from the Attorney General, that the entire ACA was unconstitutional.²

“What a glorious mess,” thundered Representative John Dingell upon learning in 2007 that the Supreme Court had assigned federal responsi-

bility for climate change to the Environmental Protection Agency (EPA) through a case brought by coastal states. “The only way in which that can be properly addressed is by seeing to it that the Congress goes in and cuts down the thicket so we can achieve an intelligent policy.”³ But Congresses have repeatedly failed to adopt policy on climate change since it reached the national agenda in the 1980s. President George W. Bush deflected that Supreme Court pressure, but successor Barack Obama swiftly embraced the same 2007 decision, ordering aggressive reinterpretation of multiple provisions of the 1990 Clean Air Act amendments. Donald Trump prioritized repeal, reversal, or delayed implementation of every major climate policy initiative advanced by his predecessor through executive action. He boasted in 2018 that he had begun to eviscerate all the climate policy steps of his predecessor, noting in one prominent case: “Did you see what I did to that? Boom. Gone.”⁴ The policy reality was far more complicated, however, and the glorious mess endures.

In April 2017, Trump signed an executive order declaring: “It shall be the policy of the executive branch to protect and preserve State and local control over the curriculum, program of instruction, administration, and personnel of educational institutions, schools, and school systems, consistent with applicable law.”⁵ According to a senior official in the U.S. Department of Education, the executive order aimed to eliminate “top-down mandates that take away autonomy and limit the options available to educators, administrators, and parents.”⁶ More specifically, the executive order authorized Secretary of Education Betsy DeVos to conduct a comprehensive review of any federal regulatory and administrative rules that undermined state and local educational decisions and practices. According to an executive order supporter, the review would include “Dear Colleague letters, interpretive memoranda, policy statements, manuals, circulars, memoranda, pamphlets, bulletins, advisories, technical assistance, and grants of applications for waivers.”⁷ While President Barack Obama extensively used a spectrum of executive tools to expand federal involvement to address inequality in K–12 education, Trump shifted in the opposite direction.

These three vignettes ostensibly have disparate policy foci, but they uniformly illustrate a salient feature of American governance—the degree to which executive branch action profoundly shapes policy. The last

ninety years have witnessed a major transformation of American governance. Within the separation-of-powers system, a significant shift in discretion toward the executive branch has occurred—toward what many supporters of President Trump have called the “deep state.” Congress has frequently lacked the capacity and will to write statutes that specifically shape the design and implementation of large, complex public programs. It has often explicitly delegated vast authority to the bureaucracy to make major decisions about these programs. Moreover, growing partisan polarization over the last four decades has interacted with highly competitive elections and the resulting “permanent campaign” to fuel congressional dysfunction. Manifestations of this dysfunction include a growing proportion of congressional staff devoted to party communications rather than the substance of legislation, a rise in the number of partisan message votes on bills that stand no chance of passage, and, more generally, congressional gridlock in the face of pressing policy problems.⁸ Recent Congresses have struggled mightily to adopt new legislation in many areas of domestic policy.⁹ Moreover, when programs run into troubles that undermine their effectiveness, Congress finds it nearly impossible to pass legislative amendments that repair them and get their implementation back on track.¹⁰ Policy learning and maintenance become enfeebled. In the face of congressional dysfunction, pressures on the executive branch to step into the breach and shape policy have intensified.¹¹

This development has raised important questions of democratic accountability. Some scholars underscore that it signals the growing power of a professional bureaucratic complex within the government. Writing a half century ago, Frederick C. Mosher¹² depicted the traditional distinction between policy and administration as a “myth” and noted the rise of “the professional state” whereby “in government, the professions are the conveyer belts between knowledge and theory on the one hand and public purpose on the other” (p. 103). In Mosher’s view, various professional groups had staked out their turfs within an array of government agencies. They had become an “elite corps with substantial control over the operations of the agency” and “significant influence on agency policies” (p. 110). While acknowledging that political appointees in the executive branch might check the power of these professionals, he noted that many of them shared the educational backgrounds and outlooks of the career service (pp. 171–72). Sensing the risk of experts being “on top rather than on tap” in administrative agencies, Mosher expressed hope that professional education in universities and more generally might in-

still an ethos or mindset that would make “the professions safe for democracy” (pp. 213–14, 219).

More recent scholarly literature, however, calls into question Mosher’s thesis concerning professional dominance. This research documents that the shift of major decisions to the executive branch has marched in lockstep with the surging importance of the administrative, or unilateral, presidency. The commitment and capacity of the White House and top political executives to shape who benefits from federal programs without changes in law, other forms of congressional approval, or the support of professionals within agencies has come under the microscope.

This book seeks to illuminate the dynamics of the administrative presidency under Donald Trump in three critically important policy arenas: health care, climate change, and education. In each of these spheres, the arrival of the Trump administration represented a *hostile takeover*¹³ where highly salient White House policy goals departed sharply from the more “liberal” ideologies¹⁴ and objectives of key agencies and actions taken by the prior presidential administration to realize them.¹⁵ In all three domains, executive action in myriad forms loomed front and center in the Trump administration’s efforts to reverse course. By focusing on the Trump administrative presidency in selected policy arenas, we address five major research questions. First, what were the goals of the Trump administration in these arenas during its initial period in office? Second, to what degree and in what ways (for example, tools and strategies employed) did the White House and Trump appointees strive to achieve their objectives via administrative processes? Third, to what extent did their administrative strategy succeed or fail in promoting these objectives, and are any accomplishments likely to prove durable? Fourth, what are the likely implications of executive actions for the achievement of key program outputs and outcomes in a given policy sphere (for example, health insurance coverage, greenhouse gas emission reduction, and student achievement)? Fifth, how do the cases advance understanding of the potential and limits of the administrative presidency as a vehicle for promoting or undermining democratic accountability in American governance?

This chapter provides the provenance for addressing these questions. We open by reviewing the growing literature on the administrative presidency. This research has cast considerable light on this phenomenon but has, until recently, neglected the implications of federalism when state and local governments serve as implementing agents of the national government. The chapter then turns to the particular characteristics of

the Trump administration—the political context it faced as well as the values, knowledge, and executive skills the new president brought (or did not bring) to the position.

The Administrative Presidency Reexamined

Decisive unilateral actions by presidents date back to the early days of the republic. Thomas Jefferson's Louisiana Purchase and Abraham Lincoln's Emancipation Proclamation are but two in a sea of examples from American history. The executive actions presidents employ to shape domestic policy have become especially pertinent since the inception of what political scientists Sidney Milkis and Nicholas Jacobs term the "executive-centered administrative state" under Franklin D. Roosevelt in the 1930s and 1940s. In reviewing this historical development, they portray the period from the end of World War II to the late 1960s as a period where partisan concerns played a relatively modest role in shaping the administrative presidency. Since that time, however, and coincidental with a growing research focus on the administrative presidency, political polarization has "encouraged the White House to deploy executive power in the service of partisan objectives." They spotlight the presidency of Richard Nixon as a catalyst for this development, but identify Ronald Reagan as the pathbreaker in "exploiting administrative power for . . . partisan objectives."¹⁶

In his seminal work establishing the concept of the "administrative presidency" as an important research focus, political scientist Richard Nathan also underscored the significance of the Reagan presidency.¹⁷ He portrayed Reagan as vastly more effective than Nixon in using executive branch tools to accomplish major policy objectives. Following in Nathan's wake, other scholars also pointed to Reagan as ushering in a "sea change"¹⁸ in the emergence of an aggressive, partisan, finely tuned administrative presidency. As Robert Durant observes: "Upon assuming the presidency, Ronald Reagan relentlessly applied an administrative strategy in pursuit of his policy goals in a fashion and to an extent unprecedented in terms of its strategic significance, scope, and philosophical zeal."¹⁹ Reagan embraced a spectrum of tools to promote his administrative presidency: a centralized mechanism for clearing (or rejecting) administrative rules, reorganizations, budget reallocations, and agency rulemaking. Above all, he used his appointment authority to staff agencies with officials personally loyal to him as well as deeply committed to his ideological and policy agenda.²⁰ More recent work has

focused on how presidents pursue their objectives through executive orders, proclamations, directives, memoranda, signing statements, and the like. Political scientist William Howell finds such unilateral actions to be “the distinguishing mark of the modern presidency.”²¹

Subsequent presidents built on the Reagan model to pursue their own vigorous, multifaceted versions of the administrative presidency. To be sure, Reagan’s immediate successor, George H. W. Bush, toned down the politicization of the bureaucracy and made commitment to “movement” conservatism less central to the appointment process.²² But the Clinton, second Bush, and Obama administrations aggressively employed executive actions to pursue their policy goals. While promoting objectives consonant with the values of much of the career bureaucracy, Bill Clinton moved to strengthen the role of the president in directing administrative agencies. According to Elena Kagan, “presidential control of administration, in critical respects, expanded dramatically during the Clinton years, making the regulatory activity of the executive branch agencies more and more an extension of the President’s own policy and political agenda.”²³ Clinton’s strategy directly intersected with the legal question of whether congressional delegations of authority to an agency head were buffered from direct control by the president. Clinton strongly rejected this view. As Kagan notes, his “principal innovation in the effort to influence administrative action lay in initiating a regular practice . . . of issuing formal directives to executive branch officials regarding the exercise of their statutory discretion.” By so doing, Clinton made administrative action “his own, in a way no other modern President had done.”²⁴

As we will subsequently discuss, Clinton also proved to be a pacesetter in the context of presidential federalism, expanding the use of program waivers as a tool of the administrative presidency. Prior to Clinton, the federal government had used demonstration waivers to the states sparingly and mostly to probe research questions generated by state implementation of welfare, Medicaid, and related social programs. The number and range of approved waivers under Clinton increased dramatically.²⁵ They became much less concerned with testing research hypotheses and much more focused on giving states the opportunity to expand policies that resonated with the Clinton administration’s program priorities. The second Bush, Obama, and Trump administrations continued to use waivers in this expansive, programmatic fashion.

Upon assuming office in 2001, George W. Bush launched a muscular approach to the administrative presidency. His administration pursued

a coordinated personnel selection process that resembled, and may well have eclipsed, that of the Reagan administration in its sophistication and emphasis on personal and ideological fealty to the president. The Bush transition team, for instance, created a more comprehensive database on applicants for presidential appointments than any incoming administration had ever assembled.²⁶ Bush followed past presidents in using the White House review of agency regulatory proposals to further his goals. He also actively employed executive orders and other directives. In January 2001, for example, he issued an executive order that established the White House Office of Faith-Based and Community Initiatives. This action sought to expand the role of religious organizations in government programs, among other things opening the door to federal funding of their activities. The Bush administration followed up by requiring pertinent agencies to audit procurement and other practices to identify factors that discouraged faith-based organizations from receiving federal grants to deliver social services.²⁷ Additionally, President Bush (with strong support from Vice President Richard Cheney) embraced unitary executive theory, repeatedly referring to it in signing statements. This legal doctrine departs massively from conventional practice in arguing that the president has sole responsibility for what occurs within the executive branch. It holds, for instance, that the president has the authority to remove commissioners in independent regulatory agencies for political reasons. More generally, it seeks to constrain congressional authority to limit presidential control over administrative agencies.²⁸

The Obama administration has also drawn scholarly attention for its aggressive use of executive action to achieve policy and partisan goals. While claiming to have issued fewer executive orders than other presidents, Obama employed other administrative means to accomplish his ends. In the view of two observers, he “developed more creative tactics that framed administrative partisanship as more routine and less visible” and “brought informal but policy consequential tactics to a new level.”²⁹ Continuing in the tradition of Bill Clinton, Obama issued numerous presidential memoranda to agency heads. These and related documents (for example, statutory findings, guidance materials) prompted these officials to make important policy changes.³⁰ In February 2011, for instance, the president determined that a 1996 statute prohibiting the federal government from recognizing same-sex marriages was unconstitutional, and he directed the Justice Department not to defend the law in court. In June 2012, the president provided guidance documents to the Department of Homeland Security that established Deferred Action

for Childhood Arrivals (DACA), which shielded certain undocumented residents who had been brought to the United States prior to age sixteen from deportation. Obama, to a greater degree than his predecessors, also used the appointment of “policy czars” based in the White House to accomplish his presidential aims.³¹ His administration issued numerous waivers to free states and their schools from the requirements of No Child Left Behind legislation passed under President George W. Bush. In these and countless other ways, the Obama administration pursued executive initiatives to further its policy and partisan goals.

The muscular, multifaceted versions of the administrative presidency that have emerged over the last four decades stem not only from the forces that have vitiated Congress in the policy process. They also reflect increasingly elevated public expectations about what a president should achieve. More than any other actor in the political system, the public holds the president responsible for developments in government, the economy, and broader society. Numerous media outlets aggressively cover the president in a twenty-four-hour news cycle, reinforcing the public’s focus on him and stoking debate about his performance. As Elena Kagan has observed, “For the President not to lose control of the debate about him, he must grab the public stage and make the news himself” to “demonstrate action, leadership, and accomplishment.”³² With legislative achievements hard to come by, executive action becomes more alluring. In turn, a kind of one-way ratchet effect becomes more probable—the more presidents take control, the more the public (both liberal and conservative) expect them to do so. Partisans claim executive overreach when the opposing party controls the White House. But they fully expect presidents of their own party to adopt an aggressive approach to executive branch action.³³

Presidential Federalism and Executive Action

This book also seeks to enhance understanding of the administrative presidency in the context of intergovernmental programs rooted in federalism. What does it mean for states to implement federal policies over an extended period in which those policies are whipsawed by shifting presidential federalism preferences and strategies rather than legislation? The national government relies on the states and localities to implement either partially or fully its policies in an array of areas—education, health care, housing, income support, environmental protection, transportation, and more. Early research on the administrative presidency paid scant atten-

tion to the special challenges presented by intergovernmental programs. More recently, however, studies have increasingly analyzed the ways presidents leave their mark on these programs through executive action. For instance, a growing body of research suggests that to improve their electoral prospects, presidents (often more than members of Congress) shape federal grant allocations to particular states.³⁴ More central to this book, presidents also seek to advance their policy preferences through executive action. For example, several studies have highlighted a pattern of “executive federalism” where presidential administrations negotiate with governors and, at times, state legislators to reshape and transform intergovernmental programs via the administrative process. They have stressed the dramatic importance of program waivers as a tool of the administrative presidency in education,³⁵ health care,³⁶ and other policy spheres.³⁷ As noted earlier, Bill Clinton did much to fuel this trend, and subsequent presidents have followed in his footsteps.

Presidential initiatives through waivers and other means often persuade states to be enablers of White House policy goals. Typically, some states welcome these actions, whereas others recoil at the prospect. They may even assemble roadblocks to the administrative presidency, substituting for a diminished Congress as a check on executive branch power. For instance, the environmental priorities of President George W. Bush precipitated a “collision between the administrative presidency and state experimentation.”³⁸ More generally, states may decline to participate in a federal grant program or refrain from submitting waiver requests that are consistent with themes the White House is promoting. State officials may drag their feet or otherwise undermine the achievement of presidential priorities in their implementation of federal policies. They may also pass laws that impede the implementation of federally administered programs.³⁹

In addition to governors and legislators, state attorneys general have since the mid-1990s loomed especially large in challenging executive branch actions and congressional legislation.⁴⁰ Elected to office on a partisan basis in forty-three states, attorneys general often act independently of other state policymakers to file suits in the federal courts. At times, they collide with their governors and can be elected from different political parties. As befits a period of intense partisan polarization, attorneys general have organized themselves by political party, with the Republican Attorneys General Association, formed in 1999, and its Democratic counterpart, formed in 2002. In addition to fundraising, these associations play pivotal roles in devising and coordinating

legal strategies to advance their partisan agendas. At times, presidential initiatives benefit from the broad, bipartisan support of state attorneys general.⁴¹ Frequently, however, presidents can count on the vigorous support from attorneys general from their own party and strong opposition from those of the other. The associations of attorneys general often work closely with private interest groups that share their ideological perspective in pursuing litigation (for example, business associations in the case of Republicans and liberal advocacy groups in the case of Democrats). Forging alliances with private groups often bolsters the financial capacity of state attorneys general from both parties to hire prominent private lawyers to direct their lawsuits.

Moreover, two trends in federal jurisprudence have enhanced the leverage of these officials. First, the federal judiciary has granted states “special solicitude” in determining whether they have standing to bring suits, which makes it easier for state attorneys general to access the courts. Second, state attorneys general have gained leverage from the increased willingness of federal district court judges to issue sweeping injunctions that block executive actions nationwide rather than in more limited domains.⁴² This development further increases the number of potential veto points for presidential initiatives in the American system of fragmented governance.

A Focus on Implementation under Hostile Takeover

Viewed broadly, research on the administrative presidency has devoted considerable attention to such tools as political appointments and executive orders. It has offered broad characterizations of executive branch strategies pursued by various presidents. Fewer studies, however, have focused on the implementation of presidential initiatives—their dynamics; whether they, in fact, advance White House goals; and the resulting implications for public policy.

Robert Durant’s study of the Bureau of Land Management in the Interior Department under President Reagan illuminates the potential contribution of such implementation studies.⁴³ Durant describes how Reagan’s appointees worked diligently to reduce regulation of public lands, foster economic development on them, and enhance local control. Drawing on evidence from New Mexico, he examines the politics that played out as these administrators sought to accomplish White House goals in four cases, involving rangeland management, land exchanges to facilitate urban development, water projects, and coal mining on public

lands. His meticulous analysis of the cases leads Durant to conclude that Reagan appointees made “some progress towards the President’s goals in each” (p. 251) but that gains were often modest and, in the case of coal leasing, “Lilliputian” (p. 193). Further progress in advancing a theory of the administrative presidency partly depends on adding to the pool of in-depth implementation studies akin to Durant’s. This book’s comparative analysis of the Trump administration’s hostile takeover of the federal bureaucracy in the health, climate, and education arenas contributes to that research objective.

In pursuing this objective, two caveats deserve note. First, our focus on the policy implications of a hostile takeover contrasts sharply with another body of implementation research on the administrative presidency. Various scholars have underscored that unilateral actions such as executive orders or other presidential decisions leave open the question of whether they will be implemented in ways that comply with a president’s preferences.⁴⁴ They have presented cases that demonstrate the limits to presidential influence. Often, these accounts focus on executive orders or actions that are not publicly salient, are of low priority to a presidential administration, reflect more incremental policy shifts, and may be initiated later in a presidential term.⁴⁵ In contrast, hostile takeovers involve high priority, politically salient presidential efforts to reorient a major policy. They tend to be signature actions of a president upon taking office. As such, the causal dynamics shaping the implementation fortunes of a hostile takeover are likely to differ appreciably from those of less prioritized and visible presidential actions involving more incremental policy adjustments.

Second, given our focus on the first three years of the Trump administration, we can only partly address the issue of durability; that is, whether the policy shifts his administration galvanized will endure beyond one term.⁴⁶ Still, our research illuminates discussions of the administrative presidency and policy durability. We explicitly consider the degree to which the Trump administration succeeded or failed in undermining Obama’s policies in our three spheres. We also engage in informed assessment of the extent to which Trump’s executive actions seem likely to be resistant to sharp reversal by subsequent presidential administrations.

The Administrative Presidency of Donald Trump

The dynamics of an administrative presidency partly depend on the partisan context a president faces. Three key partisan characteristics marked the first term of the Trump administration. First, Republicans controlled the presidency and both houses of Congress (for the first time since 2006) during the critically important first two years of Trump's hostile takeover. This not only heightened prospects that Trump's legislative proposals might win approval, it also suggested that Congress would be less likely to check the exercise of executive authority via vigorous oversight. Unified Republican government gave Trump a partisan advantage that Ronald Reagan, George H. W. Bush, and (for part of his term) George W. Bush did not enjoy. After the 2018 midterm election, Democrats won control of the House of Representatives. This greatly increased House oversight of Trump's executive actions in our three policy arenas. But with Republicans firmly in control of the Senate and presidency, the Democrats stood virtually no chance of overriding Trump's administrative initiatives through legislation.

Second, Republicans dominated state governments. The party occupied thirty-three governorships and controlled both legislative chambers in thirty-two states during most of Trump's first two years. (Republicans held more state legislative seats than at any time since the 1930s.) Republicans controlled the governor's office and both legislative chambers in twenty-five states compared to just seven states for the Democrats. This enhanced prospects for Trump administration initiatives (for example, the promotion of work requirement waivers targeting Medicaid enrollees) that depended on state cooperation for their success. The federalism context became somewhat less politically hospitable to the Trump administrative presidency after the 2018 midterms. As 2019 dawned, the number of Republican governors had declined by about 20 percent, to twenty-seven. States where Republicans controlled both houses of the legislature stood at thirty, and the number where they controlled all three elective branches had dropped to twenty-two. Meanwhile, states under unified Democratic control had doubled, to fourteen. While this context was less favorable to Trump's executive initiatives, the administration could still count on a sympathetic hearing from policymakers in about half of the states.

Third, Republicans held the office of attorney general in twenty-seven states, compared to twenty-one for the Democrats (with two being non-partisan) when Trump took office. After the 2018 election, this balance

shifted, with Republicans holding twenty-four of these offices and Democrats twenty-five (one nonpartisan).⁴⁷ The precise numbers are not very important, however, since a dedicated minority of attorneys general can still do much to stymie executive initiatives in the courts. From the start, Democratic state attorneys general assumed the adversarial role their Republican counterparts had played during the Obama years.

The fortunes of an administrative presidency also depend on the knowledge, values, and skills of a chief executive. In this respect, the Trump administration raised questions of competence that prior presidencies had not. Transition planning under Trump was vastly less developed than those of his predecessors.⁴⁸ Moreover, an assortment of commentators noted Trump's general "disengagement" from the specifics of policy and management.⁴⁹ The turnover levels in the White House and in many departments created a sense of administrative chaos. For instance, one analysis of White House turnover among Trump's "A Team" of top-ranked staff greatly exceeded those of five predecessors, going back to Ronald Reagan.⁵⁰ Amplifying this theme, David Frum, a former speechwriter for President George W. Bush, noted how Trump's "unstable temperament: his self-pity, his tantrums, his blame shifting . . . created a snake pit working environment." So, too, did the president's uncoordinated social media tweets, emphasis on personal loyalty to the point of encouraging sycophancy, and short attention span reinforce low opinions of his managerial capacity and skills.⁵¹ Others noted that Trump's real estate business had not necessitated that he deal with stockholders or a board of directors, experience that might have enhanced his understanding of how to deal with the myriad stakeholders in the U.S. system of fragmented governance.⁵² In summing up evidence on President Trump's first year as a manager, a leading political scientist and his associates concluded that "while the president claims expertise as a manager . . . his approach had few of the visible hallmarks of a successful executive in business or government."⁵³

Moreover, the glacial speed at which Trump moved to fill political appointments, a key tool of the administrative presidency, also drew attention. An incoming president has the authority to make about 4,000 political appointments to federal positions, with roughly 1,200 of them requiring Senate confirmation.⁵⁴ At times, the president made remarks that suggested limited appreciation for this tool as a means to impose his will on the bureaucracy. For instance, eight months into his presidency, Trump asserted, "I am not going to make a lot of these appointments that would normally be—you don't need them."⁵⁵ The White

House Personnel Office, which under Ronald Reagan and George W. Bush had won recognition for masterfully placing administrators loyal to the president throughout the bureaucracy, attracted media attention for incompetence under Trump.⁵⁶ The presidential personnel office employed fewer than forty people, compared to more than 100 for most presidential administrations.⁵⁷ By mid-2018, the Senate had confirmed appointments for about half of the 673 “key positions” that required its approval; the Trump administration had yet to submit nominees for 186 of these posts and generally lagged behind four prior presidents in filling these top jobs.⁵⁸ Top political appointees often found the slow pace of appointments to subcabinet positions particularly frustrating.⁵⁹ These developments threatened to thrust significant decisions into the hands of career civil servants who were unsympathetic to many Trump initiatives.

Could a chief executive with this panoply of deficits possibly mount an effective administrative presidency? Initial research on the Trump administration suggested that the answer is a resounding yes. General assessments of Trump’s first year in office point to his executive actions (along with his judicial appointments) as a sphere of achievement.⁶⁰ For instance, two academic observers wrote that the “speed” with which Trump has undone Obama administration executive initiatives “is impressive.” In their view, the initial period of the Trump administrative presidency shows that “the President’s ability to control administration has become sufficiently powerful that erasing a prior Administration requires little more than determination—and perhaps a dash of ruthlessness.”⁶¹ These analyses suggest factors that have mitigated some of the president’s leadership and managerial deficits. Of particular importance, Trump’s approach to political appointments, for all its ostensible limitations, at times served his policy objectives. The role of Vice President Mike Pence proved pivotal in this regard. As one political scientist has observed, many of Trump’s top-level political appointments in the departments were “names he got from Pence.” The vice president “was exceptionally well-wired in established conservative circles, and his recommendations reflected that.”⁶² Hence, the top cabinet positions tended to be filled with loyal ideological conservatives who shared many of the president’s (and, perhaps even more, the vice president’s) policy inclinations.⁶³ With little specific direction from the White House, they diligently worked to reverse Obama administration initiatives in the policy arenas examined in this book.

The degree to which the Trump administration’s executive actions have achieved strategic sophistication and efficacy resides, of course, at

the heart of this book's focus. Subsequent chapters support the theme that Trump's administrative presidency has made some headway in achieving its policy goals in health care, climate policy, and education. They document how Trump has pushed the envelope of executive action to unprecedented levels in the annals of the administrative presidency. But our analysis also suggests the limits to executive action as a vehicle for policy transformation in these spheres. While considerable uncertainty shrouded the executive achievements of the Trump administration after its third year, the period provides a cautionary note about the president's ability to master policy implementation challenges associated with the administrative presidency.

Why Not Immigration Policy?

Each of the policy spheres examined in this book provides an excellent provenance for illuminating the dynamics and efficacy of the administrative presidency under the conditions of a hostile takeover where the forces of federalism loom large. But issues of external validity inevitably arise. Would similar dynamics and levels of presidential attainment apply in other politically salient domestic policy spheres where states and localities play a large implementation role? In considering this question, immigration policy stands front and center. Donald Trump's presidential campaign, above all, promised radical change in the country's approach to immigration. His administrative presidency has vigorously sought to seal the country's borders from those seeking illegal entry; to track, detain, and deport undocumented residents currently in the United States; and to deny public benefits to unauthorized residents.

Trump's unprecedented executive actions in the immigration arena undoubtedly deserve detailed analysis by students of the administrative presidency. Several practical reasons inhibited us from pursuing such inquiry for this book.⁶⁴ In addition, we concluded that the forces of federalism, while certainly present, were not as consistently manifested in the immigration sphere as in our three policy arenas.

To be sure, federalism left its mark on the Trump administration's efforts to locate, detain, and deport 10 million to 12 million undocumented immigrants residing in the United States. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 had invited local government collaboration with the federal Immigration and Customs Enforcement agency (ICE) in apprehending and detaining the undocumented. In response, many localities, typically in more conservative

political areas, signed agreements to assist ICE. Meanwhile, other local officials declared their jurisdictions to be “sanctuary cities,” where law enforcement would not assist in identifying and detaining the undocumented. To punish these jurisdictions, the federal government attempted to withhold grant funds from them. As of early 2020, different appellate courts had issued conflicting rulings on the legality of this initiative.⁶⁵ Meanwhile, the acting director of ICE pointed to sanctuary cities as part of the reason that arrests and deportations of unauthorized residents declined by 10 percent from federal fiscal year 2018 to 2019.⁶⁶

The forces of federalism also have manifested themselves in the degree to which states and localities have put down the welcome mat for the undocumented by offering them public benefits. Among these benefits are in-state tuition rates for public higher education, state financial aid for students, access to drivers’ licenses, and state-funded health care. In turn, other states and local governments, in addition to collaborating with ICE, have offered none of these benefits, instead requiring verifications for employment that hinder the unauthorized from obtaining jobs. As in our three policy arenas, partisan factors substantially predict state behavior. Blue states tend to be more accommodating to the undocumented and red states more aversive.⁶⁷

The dynamics of federalism have, however, been less present in Trump administration efforts to keep migrants from entering the country. To be sure, state attorneys general filed suits against the travel bans that Trump imposed on citizens from certain countries upon taking office. But many of the administration’s executive initiatives to halt the flow of migrants across the Mexican border have focused on the national bureaucracy, sidestepping states and localities. These initiatives have included such actions as the presidential proclamation of a national emergency enabling the diversion of funds from other federal agencies to the construction of a border wall. They also have featured a series of executive actions that have slowed the processing of political asylum claims and made it harder for migrants to enter the country while waiting for their claims to be processed. These actions left thousands of petitioners housed for extended periods in makeshift camps across the Mexican border.⁶⁸

Trump executive actions to close off the border have, to a much greater degree than our three cases, featured foreign policy initiatives. The Trump administration has pursued various initiatives to pressure Central American countries and Mexico to impede the travel of migrants to the U.S.-Mexican border. For instance, it persuaded Mexico to deploy thousands of security forces to help detain migrants traveling through

that country en route to the border. These actions have led to a sharp drop in the number of migrants trying to cross into the United States.⁶⁹

In sum, the immigration policy arena under President Trump presents extremely fertile ground for the study of the administrative presidency under the conditions of a hostile takeover. It also partly illuminates the dynamics of federalism that comprise the heart of this book's analytic focus. But the forces of federalism do not as comprehensively permeate the immigration domain as they do the ACA, climate policy, and education arenas.

Overview

This chapter has highlighted a major trend in the American polity—the growing role of the executive branch in shaping who gets what, when, and how from the government. This development stoked concern that career professionals in the bureaucracy, what supporters of Donald Trump often term the “deep state,” have come to wield democratically unaccountable power and influence. But a substantial body of evidence counters this vision, pointing to the rise of a muscular administrative presidency in shaping the exercise of administrative discretion. Concern about democratic governance here centers less on the career bureaucracy and more on whether presidents have gained excessive influence relative to Congress and the rule of law.

This study seeks to enhance understanding of the potential and limits of the administrative presidency as a vehicle for achieving a president's goals under conditions of a hostile takeover. It does so by examining the implementation dynamics and efficacy of the Trump administration's executive initiatives to reverse Obama-era policies in health care, climate change, and education.

The next chapter sets the policy stage for the Trump administrative presidency by examining the Obama-era policy legacy in each of our three spheres. In addition to legislative developments during these eight years, it briefly describes the often-aggressive executive actions the Obama administration pursued. Chapter 3 assesses the Trump administration's efforts to sabotage and, ultimately, destroy the signature legislative achievement of his predecessor—the ACA. President Trump pursued executive initiatives to vitiate this law even prior to the collapse of major congressional efforts to repeal it in 2017. The steps Trump took undermined the reform law's insurance exchanges, Medicaid expansion, and quality assurance provisions. Chapter 4 examines Trump adminis-

tration initiatives to reverse Obama's policies that had sought to reduce greenhouse gases. It explores the administration's withdrawal from an international agreement to reduce greenhouse emissions (the Paris Agreement) as well as its aggressive efforts to reverse, weaken, or delay regulatory efforts addressing climate change across multiple sectors of the economy. These include far-reaching disruption of a unique inter-governmental partnership that had enabled California to be a pacesetter among states seeking to reduce vehicle emissions for more than half a century. Chapter 5 targets the Trump administration's efforts to reshape the federal government's role in education policy. The weakening of federal direction and oversight with respect to civil rights and the handling of sexual misconduct on campus comes under the microscope, as do efforts to expand school choice. Trump initiatives to undercut regulation of and otherwise encourage for-profit higher education institutions also receive attention.

Chapter 6 extracts lessons from a comparative analysis of the administrative presidency as hostile takeover in the three policy arenas. We compare similarities and differences in the objectives of the Trump administration in the three spheres, as well as the tools and strategies it employed to accomplish them. We also assay the degree to which the Trump administration accomplished its policy objectives, and strive to explain differences in the level of achievement. This discussion intersects with issues of the extent to which Obama-era policies proved durable in the face of efforts to undermine them. It also raises the broader issue of the extent to which the policies embody cost-effective, impactful ways to deal with pressing problems in our three spheres. A concluding section deals more explicitly with the implications of our findings for the fabric of American democracy. To what degree did the courts and the forces of federalism substitute for an ineffective Congress in checking actions of the Trump administration that threatened the separation-of-powers system and the rule of law?