A New Era of Federal Engagement Begins With States and Localities

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The election marks a sea change for federal environmental law and policy — a shift bolstered by a Senate likely to be friendlier to the new administration's agenda and appointments than many had anticipated.

At the level of states and localities, however, the election results turned the dial in a different direction. 2020 yielded an additional Republican governorship to further tip the balance to 27 to 23. Similarly, according to Ballotpedia, Republican majorities in state house chambers grew by two and now outnumber Democratic majorities 63 to 35 (Alaska is still undecided).

The situation is flipped at the municipal level. Democratic mayors are seated in most of the country's largest cities — 64 out of 100 — with Republicans leading only 25 cities (the rest are independents or nonpartisans).

What does this variegated political landscape mean for cooperative federalism?

Beveridge and Diamond's John Cruden, who was Obama's environmental assistant attorney general, explains that environmental protection involves states and localities more than any other issue the Biden administration faces. Furthermore, White House priorities — climate change and environmental justice — have a particularly dramatic impact on subnational governments. This point is accentuated in "The Biden Plan for a Clean Energy Revolution and Environmental Justice," which references "communities" well over 50 times. Cruden also emphasizes that several Biden appointees have held state-level positions and bring that "enormously valuable" perspective to their work.

It is not surprising, therefore, that many environmental leaders project that states and localities stand to benefit from the administration's agenda. Ben Grumbles, secretary of the Maryland Department of Environment, anticipates "a federally driven and state-supported return to 'national standards, neighborhood solutions,' with a stronger environmental safety net, using improved technology, science, and enforcement." Similarly, the Environmental Law & Policy Center's Howard Lerner welcomes the "breath of fresh air for sound science-based clean air and safe clean water policies that can better support state and local agencies' positive actions — and that's where the rubber hits the road for better public health and environmental progress."

And many appreciate the changing dynamics. The Center for Climate and Energy Solutions' Bob Perciasepe explains that the states and cities that have been developing climate policies on their own "could not rely on any support from the federal government" over the last four years and often "found it working against them." He now "expects a strong and necessary partnership for climate action to evolve."

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But the picture may not be rosy for all states. According to Bergeson and Campbell's Lynn Bergeson, "states with progressive environmental law and policy agendas will find a friend in the White House and Senate, and states less forward thinking, the opposite." She further notes "the unprecedented gusto" with which the new team is tackling climate and environmental justice and anticipates that "the administration can be expected to support state and local entities in achieving similar objectives and in challenging measures that undermine these goals."

Yet at W.R. Grace & Company, Keith Cole predicts that while "polarization is likely to continue at the national level, it is possible some states will be more likely to reach out on a bipartisan basis to the administration to collaborate on specific regional projects such as Chesapeake Bay restoration."

Consistent with the Biden plan's promise of federal support for a range of subnational initiatives, including transportation and low-carbon manufacturing, Grumbles offers that "states and localities should expect an early boost in federal money and motivation for climate action, environmental justice, and enforcement using traditional and innovative tools and technologies."

Cruden cautions, however, that funding levels may be influenced by the prior administration's deep cuts in staff and resources. Furthermore, GOP-led states likely will challenge efforts to rescind Trump-era rules. As Cruden observes, these days virtually all environmental rules are litigated — "it's just the players who change with each administration."

It is also likely that states will continue to lead in the absence of federal action. Alexandra Dunn, an outgoing EPA assistant administrator who formerly led the Environmental Council of the States, notes that it will take a while to write federal regulations even on issues the new administration may prioritize, such as per- or polyfluoroalkyl substances. In some cases, she says states are "nimbler" and can act more quickly than the federal government.

It may be business as usual in some respects but expectations are high for a new era of invigorated cooperative federalism.