The Daily Dish

Whither the Regulatory State?

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Eakinomics: Whither the Regulatory State?

There are lots interesting questions about the policies of the incoming Biden Administration, but a particular one I'm keeping my eye on is the future of regulatory policy. The choices the administration makes will affect the legislative agenda, the pace of the recovery, and the quality of future regulation.

While the outcome of the Georgia runoff elections is not yet known, most observers expect that the administration will have to work with a closely divided House and Senate, leaving little room to maneuver in putting together successful (i.e., moderate and bipartisan) legislation. The modesty of the legislation may frustrate the president's more progressive backers, tempting the Biden team to pursue its objectives via the regulatory state. At the same time, any perception of executive overreach could spark partisan antagonism and make the legislative prospects even dimmer. In any event, it will be interesting to see how the Biden Administration plays its hand.

The second issue is the pace at which the regulatory state expands. As Vice President, Biden oversaw a very rapid and costly expansion of the regulatory state. In 2009, AAF's Regulation Rodeo indicates that 339 rules were finalized at a burden of $47 billion, followed by 417 in 2010 at a cost of $169.2 billion. This was the leading edge of averaging over $100 billion a year in regulatory burdens imposed on the private sector. Many on the left remember the post-2009 period as one starved for fiscal stimulus. Maybe, but the regulatory burden was a headwind that practically guaranteed slow growth. Will the Biden Administration avoid this policy error?

Finally, the way the Trump Administration was able to control the growth of the cost of the regulatory state was its imposition of regulatory budgets. Under an executive order, the Office of Management and Budget each year assigned to each agency a regulatory budget –

the amount by which the agency can increase the cost of regulation during the fiscal year. This gives the agency an incentive to do its rulemaking at the lowest possible cost, an incentive that was previously missing from the rulemaking process. Will the Biden Administration continue the practice of regulatory budgets?

How will the incoming Biden Administration handle regulation? Will it rely heavily on bloated executive rulemakings that threaten the recovery? Will it rely on legislation to impose its policies, retaining a cost-minimizing regulatory framework for those rules needed? Or will it land somewhere in between?