

How Biden Should Spend His Final Weeks in Office

The days are dwindling to a precious few before President Biden relinquishes his tenancy at the White House to Donald Trump. Four years ago, in his [inaugural address](#), Mr. Biden promised to “press forward with speed and urgency, for we have much to do in this winter of peril and possibility.” The peril remains, but so do the possibilities. Last week [he announced](#) that he was commuting the sentences of nearly 1,500 people and pardoning 39 others convicted of nonviolent crimes. Eleven days earlier, in a decision widely criticized, Mr. Biden pardoned his son Hunter, who was awaiting sentencing on gun possession and income tax charges.

There is still much the president can do before he repairs to Delaware. He can spare federal death row prisoners from the fate some almost certainly will face when Mr. Trump returns. He can make the Equal Rights Amendment a reality after decades of efforts to enshrine it in the Constitution. He can safeguard magnificent landscapes that might otherwise be desecrated. He can protect undocumented immigrants facing deportation, alleviate crushing student debt facing millions of Americans and protect the reproductive rights of women. And more.

Yes, time is running out for Mr. Biden’s presidency, but he can still repair, restore, heal and build, as he promised he would do on the January day four years ago when he took the oath of office. Here are a few suggestions:

Commute the sentences of the 40 federal inmates on death row

By Martin Luther King III

By commuting all federal death sentences to life, Mr. Biden would move America, meaningfully, in the direction of racial reconciliation and equal justice. In 2021 he became the first president to openly oppose capital punishment. Since his inauguration, the federal government has not carried out a single execution.

If Mr. Biden does not exercise his constitutional authority to commute the sentences of everyone on federal death row, we will surely see another spate of deeply troubling executions as we did in the first Trump administration. A majority of those executed — 12 men and one woman — were people of color; at least one was convicted by an all-white jury and there was evidence of racial bias in a number of cases; several had presented evidence of intellectual disabilities or severe mental illnesses. The same problems were features in the cases of many of the 40 men on federal death row today, [more than half of whom](#) are people of color.

My father taught that the death penalty multiplies hate, violence and vengeance. Commuting federal death sentences would be a decisive shift toward love, peace and mercy.

[Martin Luther King III](#), an American [human rights](#) activist, is the eldest son of the [civil rights](#) leaders Dr. [Martin Luther King Jr.](#) and [Coretta Scott King](#).

Pardon people convicted of nonviolent marijuana offenses

By Rick Steves

Mr. Biden has taken historic steps to address America's outdated and failed federal marijuana policies. In October 2022 he [pardoned](#) thousands of people convicted of marijuana possession under federal law, and [last week](#), he granted clemency to around 1,500 people, including some nonviolent drug offenders. His administration has proposed a rule change that would reclassify marijuana — which [currently](#) shares the same classification as heroin — as a drug with a lower potential for abuse. But he can still do more.

Gallup polls have consistently shown that a significant majority of Americans support marijuana legalization. And on the campaign trail, Mr. Biden [said](#) that “no one should be in jail because of marijuana.” But his October 2022 pardons applied only to people convicted of marijuana possession, not those convicted of selling or distributing marijuana. In the final weeks of his term, he should pardon all Americans who have federal convictions for nonviolent marijuana-related crimes, and he should commute the sentences of every single person who is sitting in federal prison today for those offenses. It's the right thing to do.

[Rick Steves](#) is a travel writer and the host of the public television show “Rick Steves’ Europe.” He is also a member of the board of NORML, which is working to legalize marijuana in the United States.

Make the Equal Rights Amendment part of the Constitution

By Kirsten Gillibrand

With Republicans set to take unified control of government, Americans are facing the [further degradation of reproductive freedom](#).

Fortunately, Mr. Biden has the power to enshrine reproductive rights in the Constitution right now. He can direct the national archivist to certify and publish the Equal Rights Amendment. This would mean that the amendment has been officially ratified and that the archivist has declared it part of the Constitution.

The amendment is concise: “Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.”

The amendment would make discrimination on the basis of sex — like restrictions on reproductive care that single out women — unconstitutional, including, in my view, abortion. We’ve seen the potential of this approach; courts in several states with E.R.A.s have cited those amendments in striking down state prohibitions on Medicaid-funded abortion care.

The E.R.A. has met the requirements for certification — it passed two-thirds of Congress in 1972 and was ratified by three-quarters of the states as of 2020. Only a flawed Trump Justice Department memo prevented its certification as a constitutional amendment. The memo contended that the E.R.A. is no longer valid because it failed to meet the seven-year deadline that Congress initially set and then, when the ratification effort fell three states short, extended until 1982.

But the deadline was meaningless. The Constitution says nothing about a deadline for amending it.

No doubt this would be argued in the courts; right-wing legal challenges would follow the archivist’s certification and publication. But [there is strong legal backing for our](#)

[position](#). Mr. Biden should act now to protect reproductive rights and make the E.R.A. the law of the land.

Kirsten Gillibrand, a Democrat, is a United States senator representing New York.

Release secret Justice Department legal guidance

By Michael Waldman

Mr. Trump has vowed to use the military for the “largest deportation” ever, promising a “bloody story.” Mr. Biden can make it harder for his successor to overwhelm the rule of law.

Here’s one way: The executive branch is guided by legal analyses issued by the Justice Department’s Office of Legal Counsel. Remarkably, these documents often remain secret for years or even decades. Mr. Trump’s radical plans would bust norms and possibly break laws, and we need to learn just how aberrant they are.

The office issued guidance in 1994 on the use of the military to enforce immigration law. There’s also a 1980 Justice Department manual on the use of military force to quell civil unrest. These and many other guidelines for domestic deployment of the military are still secret. The American Civil Liberties Union has filed a freedom of information request for them.

Mr. Biden shouldn’t fight the request. In fact, he should release these documents right now.

[Michael Waldman](#), the president of the Brennan Center for Justice, is the author of “The Supermajority.”

Protect vulnerable federal lands

By John Leshy

Mr. Biden could designate more national monuments under the Antiquities Act, which would prohibit or sharply restrict certain activities in selected places. Several areas are being teed up by conservationists, including part of the 2.5 million-acre Owyhee Canyonlands in eastern Oregon. With its red rock canyons and upland sagebrush, it is

one of the largest expanses of relatively pristine land left in the continental United States.

[John Leshy](#) is a professor of law at the University of California, San Francisco, and the author of “Our Common Ground: A History of America’s Public Lands.”

Commit funds appropriated by Congress for climate initiatives

By Jody Freeman

Mr. Biden’s top climate priority should be getting clean energy grants and loans approved under the Inflation Reduction Act out the door and into the hands of the states and the private sector. Most of the Inflation Reduction Act money has been allocated already, but not all, and Mr. Trump could claw back whatever isn’t spent. That would limit the impact of Mr. Biden’s most important climate accomplishment and lead to more greenhouse gas emissions.

[Jody Freeman](#) is a professor at Harvard Law School, where she teaches courses on environmental and regulatory law.

Protect immigrants

By Andrea R. Flores

Mr. Biden was slow to act on immigration challenges, delaying major actions until the election year to secure the border, to support cities hosting increases in asylum seekers and to protect undocumented spouses. Now he has a moral obligation to mitigate the catastrophic threats to immigrants posed by Mr. Trump. He can do this by taking bold protective measures using his executive power.

He can extend temporary protected status to countries facing armed conflict, environmental disasters or other extraordinary conditions. Multiple countries have been granted that status since the bipartisan law was passed in 1990, and Mr. Biden [expanded](#) this protection to include Ukraine, Afghanistan, Ethiopia and others. Now he can do the same for other countries that meet the requirements for protection and allow eligible immigrants to apply for work permits. He should, for instance, extend and expand temporary protected status for Nicaragua and Venezuela, two countries whose people are still unable to return home because of government

repression. Ending the status for each country will be difficult, as it will require Mr. Trump to prove that country conditions have meaningfully improved.

Mr. Biden's administration can also pause immigration court hearings and administratively close cases, removing families and children from the immediate threat of mass deportation. Last, his Department of Homeland Security can expedite the asylum claims of the parents and children torn apart under the Trump administration's family separation policy, who remain vulnerable to his promised mass deportations.

[Andrea Flores](#) is the vice president of immigration policy and campaigns at [FWD.us](#), a bipartisan group pushing to reform immigration laws and policies.

Help people struggling with student debt

By Ryann Liebenthal

To call the nation's student loan system a disaster is an understatement. A headline in The Times in July [framed the situation](#) succinctly: "Student Loan Borrowers Owe \$1.6 Trillion. Nearly Half Aren't Paying."

Unfortunately, Mr. Trump has signaled his enthusiasm for policies that would harm borrowers, potentially leaving them with higher bills, larger balances and longer repayment timelines.

So now is the time for Mr. Biden to take decisive action. He should issue an order canceling the student debt for struggling seniors — some 3.5 million Americans age 60 or older [are still paying](#) off student loans — and for borrowers in default and anyone swindled by for-profit schools. Will Mr. Trump undo these measures? Probably. But let Americans see that Mr. Biden tried to make the lives of these debtors better and his successor chose to make them worse.

What action might actually survive Mr. Trump's wrecking ball? Firing the Missouri Higher Education Loan Authority, known as MOHELA, one of the nation's biggest student loan servicers. MOHELA has a proven record of abominable performance. In October the Biden administration [stopped assigning](#) new borrower accounts to the company, which failed to process more than 460,000 applications for a repayment plan that could have saved borrowers money.

[Ryann Liebenthal](#) is the author of “Burdened: Student Debt and the Making of an American Crisis.”

Strengthen access to abortion

By David S. Cohen, Greer Donley and Rachel Rebouché

Anti-abortion extremists in Mr. Trump’s orbit [have indicated](#) they want to use the 151-year-old [Comstock Act](#) to prosecute anyone who mails items that can produce an abortion, including pills, instruments and supplies. This is an [erroneous reading of the act](#), which has [long been rejected by federal courts](#), but if followed, it could jeopardize access to abortion nationwide.

The Comstock Act has a [five-year statute of limitations](#) that could put abortion providers at risk for past conduct. To guard against this risk, and despite the fact that Mr. Trump [has said he doesn’t want to pursue such prosecutions](#), Mr. Biden should pardon everyone who might be considered to have violated the act’s abortion provisions, without endorsing any interpretation of Comstock. A pardon of unnamed and uncharged individuals has precedent: President Jimmy Carter issued such a pardon [for people who avoided the Vietnam War draft](#).

Mr. Biden must also finish some outstanding tasks that will protect reproductive rights. His administration has already allowed patients and health care providers to use telehealth when prescribing abortion pills rather than require an office visit, protected the medical records of patients who traveled for care to a state where abortion was legal and worked to ensure that medically necessary abortions would be provided in emergency rooms nationwide, even if states banned such care.

Now his administration must [finalize](#) proposed [rules](#) to expand access to birth control. And his administration should complete any outstanding investigations into hospitals for failing to provide emergency abortions and make the results public when possible.

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