

Louisiana v. Biden

On **January 27, 2021**, President Biden issued Executive Order 14008, which directs the Secretary of the Interior to “pause” all oil and gas leasing on public lands and in offshore waters. In accordance with the Executive Order, the U.S. Department of the Interior indefinitely halted all oil and gas lease sales despite the requirements of the Outer Continental Shelf Lands Act and Mineral Leasing Act. Soon thereafter, a 13-state coalition led by Louisiana filed suit and moved for a preliminary injunction in the U.S. District Court for the Western District of Louisiana.

On **June 15, 2021**, the court issued a nationwide preliminary injunction restraining executive branch officials “from implementing the Pause of new oil and natural gas leases on public lands or in offshore waters as set forth in Section 208 of Executive Order 14008.” *Louisiana v. Biden*, 2021 WL 2446010, at *22 (W.D. La. June 15, 2021). In a broad rebuke of both the substance and procedure of the Biden administration’s actions, the court held that the states have a high likelihood of success on multiple Administrative Procedure Act (APA) claims.



1. First, the Moratorium is contrary to law because “[b]y pausing the leasing, the agencies are in effect amending two congressional statutes, OCSLA and MLA, which they do not have the authority to do.”
2. Second, the Moratorium is arbitrary and capricious because the administration offered no explanation whatsoever for its actions and “[a] command in an Executive Order does not exempt an agency from the APA’s reasoned decision-making requirement.”
3. Third, the Moratorium and each individual lease sale cancellation are substantive rules that failed to comply with the APA’s mandatory notice and comment procedures.
4. Fourth, the delay in the individual onshore and offshore lease sales is unreasonable and supported by only potentially pretextual reasons. The court went on to find that the Moratorium imposes “very substantial damages” upon the states that would be “difficult, if not impossible to recover, due to sovereign immunity.”

This ruling is a significant setback for President Biden's climate policy and for the administration's broader attempts to advance a far-left agenda through the regulatory process. The Moratorium on oil and gas leasing was the centerpiece of the president's "30x30" initiative, which seeks to remove 30 percent of federal lands and waters from energy development by 2030. The ruling's unambiguous command to the Department of the Interior to continue the expeditious development of the nation's energy resources preserves the thousands of jobs and billions in investment and state revenue that were threatened by the Biden administration's crusade against American oil and gas development.

This decision provides a roadmap for challenges to other Biden administration actions and reinforces several key principles of administrative law under the APA:

- **This decision underscores that litigation can and should be brought against unlawful agency actions** even if they do not involve formal final regulations. The court emphatically rejected the government's jurisdictional arguments (that there was no "final agency action") because the moratorium on all oil and gas lease sales could be easily discerned from the Biden administration's course of conduct (i.e., the systematic cancellation of oil and gas lease sales). Thus, when looking for policies to challenge, states need not confine themselves to formally promulgated rules because an "unwritten policy" that has immediate legal consequences is final agency action subject to APA review.
- **This decision underscores that the Biden administration cannot use the regulatory process to avoid implementing statutes** that it finds inconvenient or deems to be bad policy.
- **This decision shows that courts will hold the administration accountable** when it seeks to promulgate its policies through a sloppy, rushed, and opaque process that does not follow the proper procedures. Agency actions, particularly when they implement major policies, must clearly identify statutory authority, account for significant reliance interests, and employ notice and comment procedures. The Louisiana decision makes clear that Biden policies are especially vulnerable to APA challenge when they seek to cut corners or avoid the proper procedures. This decision also reiterates that an agency cannot defend its actions based on stated reasons that appear to be pretextual.
- **This decision reinforces that state plaintiffs have a particularly secure route to establishing standing** and irreparable harm by demonstrating harm to state revenues or deprivation of state rights under cooperative federalism statutes. APA review exists to hold the administration to account when it ignores the law, and states are increasingly the best situated parties to keep the Executive in check.
- **The court's issuance of a nationwide preliminary injunction underscores that broad relief will be appropriate** when there are systemic weaknesses and pervasive flaws in the administration's policies. States and other plaintiffs should not hesitate to seek the broadest possible injunctive relief in pushing back against Biden administration overreach.