DOGE-WATCH

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Dear DOGE-WATCH Community,

this is another newsletter in our ongoing observations of the DOGE administrative reform initiative in the US. A few days ago, Roland Koch spoke again with Patrick McLaughlin from the Hoover Institution at Stanford. The entire conversation is another episode of our DOGE-WATCH podcast, which you can listen to here.

We apologize for the technical issues that affected the live broadcast. To ensure you don't miss out, we've made the full episode available below. Thank you for your understanding and ongoing support.

Watch the latest DOGE-WATCH Video here.

NEXT DOGE WATCH
EVENT

15 May 2025, 17:00–18:00 CEST, online
Our Guest Prof. Patrick McLaughlin
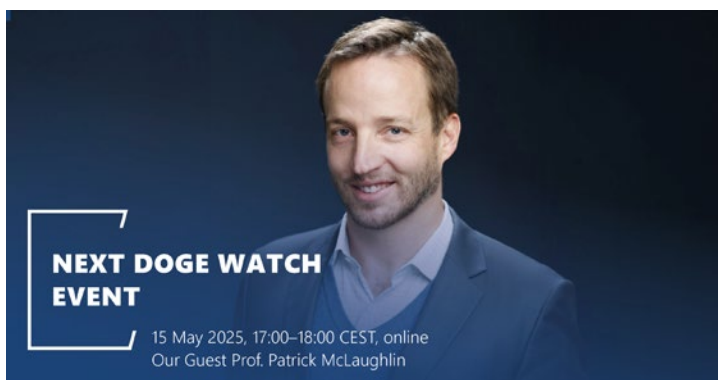
More Executive Orders than ever

There may be some parallels between Donald Trump and Harry S. Truman in terms of economic policy, and this is certainly true when it comes to the use of executive orders. Patrick showed us statistics on the various presidential terms since Truman and the use of this instrument, which does not initially require the involvement of Congress. Donald Trump is dramatically increasing the number of these immediate decisions. As can be seen in the second image, he could issue as many executive orders in his first year in office as his predecessors and he himself did in previous terms.

"Good cause" for repealing fastens rule-changes

Another important observation is the strategy with which the US administration intends to implement the entire set of regulations. In our Newsletter No. 2, we had already pointed out that the White House had issued a large number of work orders to ministries and agencies to examine whether individual regulations that had been enacted violated laws and the Constitution or caused economic damage in other ways.

A recent development in case law could open the door to the rapid repeal of regulations without the involvement of the US Congress. In effectuating repeals of facially unlawful regulations, agency heads shall finalize rules without notice and comment, where doing so is consistent with the "good cause" exception in the Administrative Procedure Act. That exception allows agencies to dispense with notice-and-comment rulemaking when that process would be "impracticable, unnecessary, or contrary to the public interest." Retaining and enforcing facially unlawful regulations is clearly contrary to the public interest. Furthermore, notice-and-comment proceedings are "unnecessary" where repeal is required as a matter of law to ensure consistency with a ruling of the United States Supreme Court. This creates a de facto right to immediately enforce regulatory changes without having to comply with deadlines or hold hearings, as the White House explained in the memorandum, "Directing the repeal of unlawful regulations" dated April 9, 2025. Patrick McLaughlin recognizes this as a tool whose impact should not be underestimated.

"Anti-Chevron" empowers judges to overrule Federal Agencies

Further development supports the speed of changes. The decision of the Supreme Court, commonly known in Europe as the ‚Anti-Chevron Decision' (correctly: Loper Bright Enterprises v. Raimondo, 603 U.S. 369, 2024, or just "Loper Bright" in the United States). With a 6:3 ruling, the court overturned the Chevron doctrine, which had been in place since 1984 and required courts to respect the interpretation of federal agencies in cases of unclear legal formulations, as long as it was considered ‚reasonable'. By overturning the Chevron doctrine, the balance of power between the judiciary and the executive is readjusted. Courts are no longer required to follow the interpretations of federal agencies, leading to increased judicial oversight of administrative acts. By limiting the powers of federal agencies, it becomes easier to challenge or withdraw existing regulations in areas such as environmental, health, and consumer protection. This aligns with the deregulation policy pursued by the Trump administration. Additionally, judges appointed by Trump could now have a greater influence on the interpretation of laws. Details from Patrick here.

Here are further court-decisions, supporting this development:

▪ *Loper Bright Enterprises v. Raimondo, 603 U.S. 369 (2024);*
▪ *West Virginia v. EPA, 597 U.S. 697 (2022);*
▪ *SEC v. Jarkesy, 603 U.S. 109 (2024);*
▪ *Michigan v. EPA, 576 U.S. 743 (2015);*
▪ *Sackett v. EPA, 598 U.S. 651 (2023);*
▪ *Ohio v. EPA, 603 U.S. 279 (2024);*
▪ *Cedar Point Nursery v. Hassid, 594 U.S. 139 (2021);*
▪ *Students for Fair Admissions v. Harvard, 600 U.S. 181 (2023);*
▪ *Carson v. Makin, 596 U.S. 767 (2022); and*
▪ *Roman Cath. Diocese of Brooklyn v. Cuomo, 592 U.S. 14 (2020).*

Article for German Readers

In the Frankfurter Allgemeine Zeitung of May 6, you will find an article by the Washington correspondent Winand von Petersdorf with an initial general assessment of the DOGE project. It mainly discusses the changes caused by radical staff reductions and the direct closure of authorities.

Find a short excerpt here:

" ... It is not without reason that observers from many countries followed the project with the hope that DOGE would succeed in transforming a bloated, sluggish apparatus into a lean and fast machine that delivers tangible results for citizens and does not swallow up so much money. All rich democracies are struggling with the existential problem of rising government debt and debt ratios, while the economy is being strangled and public confidence is falling. According to an OECD survey, the percentage of citizens who have little or no confidence in their government is now greater than the percentage of those who do.

The crude strategy of spending large amounts of money on problems is reaching its limits everywhere. The search for a role model is therefore fraught with longing.

Unfortunately, DOGE appears to be overwhelmed by the role. To date, it remains unclear what the authority is supposed to achieve. Is it supposed to improve government efficiency? Is it supposed to modernize the outdated and pointlessly fragmented information technology used by government agencies, as Musk once pointed out at a cabinet meeting when he wore a T-shirt with the words "Tech Support" printed on it? Should DOGE uncover fraud and mismanagement, similar to a court auditor? Or has DOGE's main goal from the outset been to dismantle politically unpopular institutions, eradicate programs suspected of being rainbow-colored, and remove civil servants who are suspicious to those in power because they could belong to the "deep state"?

If DOGE had been concerned with efficiency, its highly talented employees would have taken their cue from former Vice President Al Gore or former Senator Francis Cockrell. These politicians were responsible for the two government reforms of the past 130 years, which bureaucracy researcher Kevin Hawickhorst attests to having been successful. DOGE should have done what the Cockrell Commission did in the 1880s. ..."

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