How DOGE's Bite Can Live Up To Its Bark

By **Mark Ruge, Varu Chilakamarri and Neeki Memarzadeh** (January 16, 2025)

A new presidency inevitably results in substantial change. That level of change is multiplied when the incoming president is from a different party than his predecessor, as is the case this year.

And that change is further elevated when the incoming president is Donald Trump, who campaigned on disrupting the status quo in his second term in office.

One vivid illustration of the incoming Trump administration's commitment to major reform is the proposed establishment of the Department of Government Efficiency, which has been framed as a government disrupter and is **set to be co-chaired** by billionaire Elon Musk and former presidential candidate Vivek Ramaswamy.

DOGE will "cut the federal government down to size," the two leaders have said, through "three major kinds of reform: regulatory recissions, administrative reductions and cost savings."[1]

Trump has said Musk and Ramaswamy will "pave the way for [his] administration to dismantle government bureaucracy, slash excess regulations, cut wasteful expenditures, and restructure federal agencies — essential to the 'Save America' movement."[2] DOGE's leaders have promised $2 trillion in federal spending cuts and a 75% reduction in the federal workforce.[3]

In a flurry of social media posts and public statements, Musk and Ramaswamy have already provided examples of their targets, including ending certain government research projects; reducing the bloat in the defense budget; eliminating certain federal corporate subsidies; cracking down on billions in wasteful Medicare and Medicaid payments; reducing federal diversity, equity and inclusion programs; ending the California high-speed rail project; and prioritizing speedier permitting so projects can move forward faster.

Mark Ruge

Varu Chilakamarri

Neeki Memarzadeh

Other examples include reducing allowable administrative overhead on federal education grants; shutting down the Consumer Financial Protection Bureau and similar federal organizations; shrinking the federal bureaucracy; ending federal employee telework; blocking funding for federal programs with expired authorizations; shrinking federal workspace; moving federal employees out of Washington, D.C.; and streamlining federal information technology spending. And they plan to wrap up DOGE by July 4, 2026, the 250th anniversary of the U.S.

Critics have pointed out that because DOGE will not be a formal part of the federal government — instead, seeming to serve more as an advisory body[4] — it will lack the authority to actually make the changes it recommends.

While this is true, DOGE will have ample tools at its disposal to effectuate change, particularly with an attentive Republican-controlled Congress and the support of an

incoming administration. What it lacks in legal authority it may make up for in its power to influence. Here is the bottom line: if you aren't paying attention to DOGE yet, you should be.

Here are some of the levers that will be at DOGE's disposal, allowing it to turn its recommendations into real change.

Executive Actions

Musk and Ramaswamy have said they intend to "focus particularly on driving change through executive action based on existing legislation rather than by passing new laws."[5]

And one of the reasons Musk and Ramaswamy have been quick to make recommendations, even though Trump has not taken office yet, is likely because they know that executive actions are often front-loaded on the first day of a new administration and throughout the first 100 days.

The incoming administration has many executive action options, including those that (1) rescind executive orders issued by the prior administration, (2) order agencies to withdraw guidance documents and other subregulatory guidance, and (3) issue executive orders to implement new policy mandates. Trump has spoken freely about his ambitious plans to hit the ground running on Day 1.

First, a new president often issues a series of executive orders rescinding prior executive orders that conflict with the incoming president's policy agenda. These executive orders may address DOGE recommendations.

In President Joe Biden's first 100 days in office, he reversed 62 of Trump's 219 executive orders.[6] Trump is expected to likewise rescind a flurry of Biden's executive orders.

Every president is free to repeal or modify any executive order, and there is generally no particular process required for an agency to rescind a previously issued guidance document explaining that agency's then-interpretation of underlying statutes and regulations. No public comment period or notice is required.

Second, a president can also implement DOGE recommendations simply by ordering the heads of those agencies to effect guidelines, policy statements, opinion letters and other subregulatory guidance. For example, the incoming Trump administration is expected to roll back Biden-era guidance documents on issues such as border security[7] and the scope of Title IX discrimination protections.[8]

Third, incoming presidents may issue executive orders as a means of implementing affirmative policy objectives. For example, during the first week of his presidency, President Barack Obama issued Executive Order No. 13492 to close the detention facilities at the Guantanamo Bay Naval Base.[9] If Trump's and his team's statements are any indication, we can expect dozens of executive orders on a broad range of subjects on Day 1.

Regulatory Recissions and Rulemaking

Guided in part by the belief that the U.S. Supreme Court's decisions in **Loper Bright Enterprises v. Raimondo** last year and **West Virginia v. Environmental Protection Agency** in 2022 render many current federal regulations unlawful,[10] Musk and Ramaswamy say they intend to pursue mass regulatory recissions, administrative

reductions and cost savings via executive action.[11]

Given the procedural limitations surrounding rule recissions, the task of implementing DOGE recommendations may not be easy. But a new administration's and Congress' broad authority to repeal rules could bolster DOGE's mandate.

On Day 1, the incoming administration can be expected to press the brakes on all rulemaking that is still pending — the gears of government must stop before going in reverse.

This is accomplished through a regulatory freeze memorandum by the Office of Management and Budget that is sent to the heads of agencies and imposes a moratorium on regulations that have not yet been published in the Federal Register, giving the incoming administration the opportunity to review pending rules before deciding to finalize or abandon them.

Moratoria are extremely common and were used by Obama,[12] Trump[13] and Biden.[14]

The most cumbersome process will be for regulations that were finalized by previous administrations, and changing regulations will not be as easy as stroke of a presidential pen.

A regulation has been finalized if it was placed on public inspection or published in the Federal Register.[15] Under the Administrative Procedure Act, the rulemaking procedures that an agency must follow for repealing or amending a regulation are the same as for issuing a new rule.[16] A final rule's effective date will often determine a new administration's authority over it.

Under the APA, an executive department or agency must generally provide a period of at least 30 days after a final rule is published in the Federal Register before the rule takes effect.[17]

The Congressional Review Act extends this deadline to 60 days for "major rules."[18] If a final rule has not yet taken effect, the new administration can suspend the rule.

A suspension provides the administration time to determine if the final rule should be implemented, modified or rescinded. However, because courts view suspension as an analog to amending or repealing a rule,[19] an agency must adhere to the APA's rulemaking requirements to suspend a rule's effective date.[20]

Musk and Ramaswamy have been outspoken in their desire to challenge department regulations that allegedly exceed the authority granted by underlying statutes. As noted above, they have pointed to two major U.S. Supreme Court rulings that will guide their actions.

First, in West Virginia v. EPA, the Supreme Court reiterated the importance of the major questions doctrine, holding that on certain matters of "economic and political significance," agencies can act only with "clear congressional authorization."[21]

Similarly, in Loper Bright v. Raimondo, the court overturned the long-standing Chevron doctrine, thereby ending judicial deference to agency interpretations of their own regulatory authority.[22]

Musk and Ramaswamy said, "Together, these cases suggest that a plethora of current federal regulations exceed the authority Congress has granted under the law."[23] Challenging an agency for issuing regulations beyond its authority will not be easy, but it certainly will be much easier when one party controls the administration and the agency itself.

Impoundment

One of the most powerful, and potentially controversial, ways for the new Trump administration to implement DOGE recommendations is to simply not spend monies on programs that DOGE has targeted.

Under the Congressional Budget and Impoundment Control Act of 1974, an administration must spend funds appropriated by Congress. Under the Impoundment Act, if an administration decides not to spend congressionally approved funds, it must return to Congress for its approval, which Congress is often reluctant to give.

Musk and Ramaswamy have stated that Trump "previously suggested [the Impoundment Act] is unconstitutional, and we believe the current Supreme Court would likely side with him on this question."[24] Following through on that threat would set up a major Constitutional showdown with Congress.

In addition, Ramaswamy and Musk say, even without overturning the Impoundment Act, "DOGE will help end federal overspending by taking aim at the $500 billion plus in annual federal expenditures that are unauthorized by Congress or being used in ways that Congress never intended," citing, for example, funding for the Public Broadcasting Service and Planned Parenthood.[25]

Legislation

Of course, DOGE recommendations can be implemented via the legislative process. That ranges from Congress' power of the purse through the appropriations process to changes in law that could radically reshape federal policy, programs and priorities in countless ways.

One way DOGE could influence the legislative process is through the Trump administration's fiscal year 2026 proposed federal budget, which is expected to be released in the first quarter of this year will outline the new president's proposed blueprint for federal funding.

Already, the Republican-controlled Congress has shown an extreme eagerness to implement DOGE regulations through changes in law. In November, leaders of the U.S. House of Representatives' Oversight and Accountability Committee announced the formation of a new DOGE subcommittee, the Subcommittee on Delivering for Government Efficiency, chaired by Rep. Marjorie Taylor Greene, R-Ga.

One challenge the new subcommittee will face is that other congressional committees will have subject matter jurisdiction over recommendations from DOGE.

At the same time, the U.S. Senate has formed a Senate DOGE caucus, chaired by Sen. Joni Ernst, R-Iowa, designed to "serve as the 'bite' to partner with the 'bark' of [the] Trump administration's [DOGE]."

Ernst has already said she will work closely with a newly formed House DOGE caucus. Musk and Ramaswamy have been meeting with House and Senate leaders, and DOGE legislation

has already been introduced by several members of Congress.

Today, Republicans control both the House and Senate, along with the presidency, but the margin in the House is particularly thin. Historically, the party of the president loses seats in the midterm elections, and often many seats. Republicans lost 41 seats in the 2018 midterm election during Trump's first term in office.

That means Republican control of both the House and Senate is only guaranteed for the next two years, increasing the urgency for DOGE to recommend and seek to implement legislative changes as quickly as possible.

The Bully Pulpit

The combined voices of Trump, Musk and Ramaswamy ensure that any recommendation will receive maximum public attention from the so-called bully pulpit that their status commands.

In today's age of social media — Musk has more than 200 million followers on X, formerly known as Twitter, and every social media post by Trump is scrutinized and amplified — bully pulpit takes on a whole new meaning.

Simply highlighting a program that DOGE views as problematic will be a signal not missed by department and agency heads and Republican members of Congress on committees with jurisdiction. While DOGE cannot ensure the demise of any federal program, it can bring unwanted attention that could, at a minimum, disrupt the agency's policy agenda.

Conclusion

All signs suggest that DOGE will be an important part of the new Trump administration with a power to make radical change that far exceeds its technical authority to do so.

With a mandate spanning the federal government and high-level buy-in from the president and Congress, DOGE could affect the federal government, its programs and its funding in ways that are difficult to predict.

Few forces are as pervasive and far-reaching as the federal government, which affects businesses and other organizations with relentless consistency. Policies, regulations and requirements that affect every organization could be on the line. In short, every corporate attorney should keep his or her eyes on DOGE.

Mark Ruge is a partner and co-chair of the Loper Bright decision task force at K&L Gates LLP. He previously served as chief of staff to Rep. Bob Davis, R-Mich., and as deputy staff director (minority) of the House Merchant Marine and Fisheries Committee.

Varu Chilakamarri is a partner at K&L Gates. She previously worked at the U.S. Department of Justice, most recently as deputy assistant attorney general in the DOJ's Civil Division.

Neeki Memarzadeh is an associate at K&L Gates.

affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.

[1] Elon Musk & Vivek Ramaswamy, The DOGE Plan to Reform Government, Wall St. J.(Nov. 20, 2024), https://www.wsj.com/opinion/musk-and-ramaswamy-the-doge-plan-to-reform-government-supreme-court-guidance-end-executive-power-grab-fa51c020.

[2] Eric Katz, Trump Vows to 'Dismantle Federal Bureaucracy' and 'Restructure' Agencies With New Musk-Led Commission, Gov't Exec. (Nov. 12, 2024), https://www.govexec.com/management/2024/11/trump-vows-dismantle-federal-bureaucracy-and-restructure-agencies-new-musk-led-commission/400998/.

[3] Luke Garrett, Elon Musk and Vivek Ramaswamy Take Their DOGE Government Efficiency Pitch to the Hill, NPR (Dec. 5, 2024), https://www.npr.org/2024/12/04/nx-s1-5205354/musk-ramaswamy-doge-congress.

[4] https://www.bbc.com/news/articles/c23vkd57471o.

[5] Musk & Ramaswamy, supra note 1.

[6] Jason Breslow, Biden's 1st 100 Days: A Look By The Numbers, NPR (Apr. 27, 2021), https://www.npr.org/2021/04/27/988822340/bidens-1st-100-days-a-look-by-the-numbers; Alvin Chang, Francisco Navas, and Daniel Strauss, Every Executive Action Joe Biden Has Signed – and What They Do, The Guardian (Mar. 8, 2021), https://www.theguardian.com/us-news/2021/feb/08/joe-biden-executive-orders.

[7] Donald Trump, This Is How I Will End Joe Biden's Border Disaster on Day One, Des Moines Reg.(Jan. 3, 2024), https://www.desmoinesregister.com/story/opinion/columnists/caucus/2024/01/03/donald-trump-joe-biden-border-disaster/72093156007/.

[8] Greta Reich et al.,Trump's Plans to Remake America in 1 Week, Politico (Dec. 3, 2024), https://www.politico.com/news/2024/12/03/trump-week-one-policy-promises-00192436?nname=playbook&nid=0000014f-1646-d88f-a1cf-5f46b7bd0000&nrid=0000014c-2419-d9dd-a5ec-34bd68d40002&nlid=630318.

[9] Exec. Order No. 13,492, 74 Fed. Reg. 4897 (Jan. 27, 2009).

[10] Presidential Win Rates, Inst. for Pol'y Integrity (June 21, 2024), https://policyintegrity.org/tracking-major-rules/presidential-win-rates.

[11] Elon Musk & Vivek Ramaswamy, The DOGE Plan to Reform Government, Wall St. J.(Nov. 20, 2024), https://www.wsj.com/opinion/musk-and-ramaswamy-the-doge-plan-to-reform-government-supreme-court-guidance-end-executive-power-grab-fa51c020.

[12] Off. of Mgmt. & Budget, Exec. Off. of the President, OMB Mem. No. M-09-08, Implementation of Memorandum Concerning Regulatory Review (2009).

[13] Off. of Mgmt. & Budget, Exec. Off. of the President, OMB Mem. No. M-17-16, Implementation of Regulatory Freeze (2017).

[14] Off. of Mgmt. & Budget, Exec. Off. of the President, OMB Mem. No. M-21-14, Implementation or Memorandum Concerning Regulatory Freeze Pending Review (2021).

[15] Cong. Rsch. Serv., IF12723,Presidential Transitions: Midnight Rulemaking(2024),https://crsreports.congress.gov/product/pdf/IF/IF12723.

[16] 5 U.S.C. §§ 551et seq.

[17] Perez v. Morg. Bankers Ass'n , 575 U.S. 92, 101 (2015).

[18] 65 U.S.C. § 553(d).

[19] 5 U.S.C. § 801(a)(3).

[20] Clean Air Council v. Pruitt , 862 F.3d 1, 9 (D.C. Cir. 2019); Air All. Hous.v. EPA , 906 F.3d 1049, 1065 (D.C. Cir. 2018).

[21] West Virginia v. EPA , 597 U.S. 697 (2022).

[22] Loper Bright Enters. v. Raimondo , 144 S. Ct. 2244 (2024).

[23] Elon Musk & Vivek Ramaswamy, The DOGE Plan to Reform Government, Wall St. J.(Nov. 20, 2024), https://www.wsj.com/opinion/musk-and-ramaswamy-the-doge-plan-to-reform-government-supreme-court-guidance-end-executive-power-grab-fa51c020.

[24] Id.

[25] Id.