



San Gabriel Forum Presentation:

DOGE- Testing the Limits of the Power of the Executive Branch.

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“When you pull pigs from the trough, the pigs will squeal.”

We can all recognize that President Donald Trump’s DOGE Initiative is a polarizing issue. It is attacking long standing government policies and insinuating itself into the operations, staffing and expenditures across all federal agencies. In doing so, it has, depending upon your viewpoint, exposed governmental waste, fraud and abuse, or become an executive overreach without constitutional authority. But it is more than that, it is an important test of the limits to the powers of the Executive, Legislative and Judicial branches of the Federal Government which can have far reaching consequences beyond the immediate issues.

Those who reject its constitutional authority do so based on two major arguments:

DOGE is illegal – it not an agency that was properly approved by Congress.

Even if legal, DOGE has limited oversight and authority.

Why is DOGE being challenged?

It is providing transparency into the “Deep State” that has taken over the operations of the Federal government showing:

- ▶ The inefficient, wasteful and possibly fraudulent spending of taxpayer dollars to enemies of the US and to fund hidden slush funds.
- ▶ The alliance of Federal agencies and NGOs (Non –Governmental Organizations) and Special Interest groups.
- ▶ The cross pollination of staffing between Federal agencies, NGOs and Special Interest groups.
- ▶ The visible and hidden resistance of long-term, entrenched Federal employees to changes in administrations and new policies with which they do not agree.
- ▶ The routing of Federal tax dollars to pet projects or interests of Departmental, administrative personnel without oversight or transparency.
- ▶ The unnecessary bloating of Federal payrolls to increase unionized employee counts, their dues and ultimately their donations (through the unions) to liberal politicians and partes.

Goals of DOGE Opponents:

Under the guise of “protecting democracy”, opponents of DOGE have pursued a policy of forum shopping – the process of selecting favorable, left-leaning, activist, Federal judges and courts to engage in lawfare against the Executive Branch. These efforts seek to:

- At a minimum, tie up the Executive Branch DOGE initiatives in court through a lengthy judicial process in the hopes of gaining Congressional and Senatorial power in the 2026 elections.
- Win the “Golden Ticket”, restrict the power of the President and the Executive Branch to faithfully and constitutionally execute the powers of the Executive branch for which the electorate chose it to do – until they “own” the three branches of government.

Key Questions on the Separation of Powers

- ▶ What are the limits to the powers granted to the Executive Branch.
 - ▶ Is the setting of government policy the power of the Executive, Judicial or Legislative branches.

Can the Executive choose to countermand the expenditures designated by the Legislative if it feels that they are wasteful –or worse – fraudulent?
- ▶ What are the limits to the powers granted to the Judiciary Branch.
 - ▶ What limits are there to the powers of District Judges?
 - ▶ Can they issue stays or orders beyond the scope of their Judicial District?
- ▶ What are the limits of the powers granted to the Legislative branch?

Can it intercede into how the Executive branch chooses to disburse those funds granted it?

Challenges to DOGE:

1. DOGE is illegal –

a. it is not an agency that was properly approved by Congress.

b. Elon Musk has no authority or legal status because he was not submitted to the Senate for review and approval.

c. It has no authority or funding to hire employees.

d. It has no authority or oversight over other Federal agencies.

Major DOGE Power Challenges:

1. Even if it is legal, DOGE is overstepping the limits of its authority. It has no oversight or legal authority:
 - ▶ to fire federal employees in other agencies.
 - ▶ to invalidate collectively bargained Federal Employment Agreements.
 - ▶ to cancel the legally issued Federal contracts of other agencies.
 - ▶ to cancel funds already appropriated by Federal agencies under the previous administration or to claw back funds already dispersed.
 - ▶ to access the financial information and transactions of other US Departments.
 - ▶ to access financial transactions in US Treasury financial accounts.
 - ▶ to access the personal financial information of US taxpayers in IRS and Social Security files.

Response to: It is not an agency that was properly approved by Congress.

We must first consider the authority vested to the Executive Branch in the US Constitution. The Executive Branch exists as a co-equal partner with the Legislative and Judiciary. It is empowered by the Constitution to execute the laws passed by the Legislative Branch and to set government policy. Unlike the Legislative and Judicial Branches, the President is the only position in the United States government that is selected through a general election of the population of the United States.

DOGE is the re-purposing and renaming of the U.S. Digital Service, an existing agency that was launched by President Barack Obama in 2014 and it was granted access to government IT systems and data at its inception. It was headed by an appointee, a tech engineer who formerly worked for Google. He was not submitted to the Senate for review and approval – and no one cried foul then.

Trump's executive order simply renamed the U.S. Digital Service as DOGE and reorganized it within the Executive Office of the President. As such, its existence and funding were already provided through the Executive Branch of the Federal Government — and a president has complete control over the structure, organization, and staff of his Executive Office. Neither Congress nor any court can tell him what to do within that office. government.

Response to: Elon Musk has no authority or legal status because he was not submitted to the Senate for review and approval.

Musk isn't an officer requiring Senate confirmation and there is precedent. Harry Hopkins, while lacking an official title for most of his years in Washington, became known as Democratic President Franklin Roosevelt's "Deputy President". As such, he attended cabinet meetings, had access to top secret information, sat in foreign policy meetings ring the war and advised the President on a wide range of policy decisions— all without official portfolio or legislative review and approval.

Obfuscating rhetoric aside, Musk has no actual power to change or cancel contracts, terminate or halt spending, or create any regulation. He is simply an unofficial adviser to the president with no executive enforcement authority of any kind. All he can do is make recommendations—which, as Trump reminded his Cabinet during their first meeting, to which agency officials can object to the President.

It is the office of the President that is vested with the authority under Article II of the Constitution to carry out Congress' legislative mandates. Thus, he has a constitutional obligation to ensure that bureaucrats within the Executive branch are complying with statutory requirements and that taxpayers are getting the most bang for their buck.

Discussion Continued.

On top of that, the President has inherent constitutional authority to instruct executive officials to gather whatever information is needed to carry out those duties, unless there is a specific statute that limits the president's authority, is within the constitutional bounds of congressional authority, and does not violate the president's constitutional position as the head of the executive branch.

The notion that federal agencies should police themselves and that the President has no authority to do that (or to receive advice on how to do that from anyone he wants) is nonsense. It is fundamentally contrary to the constitutional mandate that the buck stops with the president.

That's why Trump doesn't need Congress to pass a law authorizing DOGE to do its work. He has inherent constitutional authority as the chief executive to ensure that federal agencies are following the law.

Discussion Continued

- ▶ As the Chief Executive of the United States, President Trump can authorize Musk and DOGE to do what he simply cannot because of time and resource constraints on him. To argue otherwise is to suggest either that the president can be barred from ensuring that the laws be faithfully executed or that the chief executive must be omniscient. Neither is tenable—and the former is unconstitutional.

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Response to Doge has no authority or funding to hire employees.

As the Chief Executive of the United States, President Trump has authority over all Executive Branch agencies. He has given Elon Musk the authority to select his DOGE team, hire them and empower them with financial oversight responsibility over all Executive Branch agencies to uncover financial waste, fraud and abuse.

- ▶ Elon Musk is not a Federal employee. He is not receiving any remuneration for his services, so he does not need to be submitted to the Senate for review and approval. Musk is what's known as a "special government employee," a temporary appointment that allows him to work for 130 days per year. That means he's subject to different ethics and disclosure rules than regular federal employees. He serves at the pleasure of the President of the United States in an advisory capacity, and he cannot take any direct actions without the approval of the President.

▶ **“You can only kick the can so far. Once you reach the edge of the cliff you have nowhere to go.”**

DOGE does not have the authority that it claims.

1. Even if it is legal, DOGE has no oversight or legal authority:
 - a. to fire federal employees in other agencies. **4/8/25 -SCOTUS ruled in favor of DOGE**
 - b. to invalidate collectively bargained Federal Employment Agreements.
 - c. to cancel the legally issued Federal contracts of other agencies.
 - d. to cancel funds already appropriated by Federal agencies under the previous administration or to claw back funds already dispersed. **4/4/26 - SCOTUS ruled that funds earned must be paid for services already delivered.**
 - e. to access the financial information and transactions of other US Departments. **4/7/25 – US Appeals Court rules in favor of DOGE access.**
 - f. to access financial transactions in US Treasury financial accounts. . **4/7/25 – Appeals Court rules in favor of DOGE.**
 - g. to access the personal financial information of US taxpayers in IRS and Social Security files. **4/7/25 – Appeals Court rules in favor of DOGE.**

Response to DOGE's authority limits.

All of these are generally true, DOGE has no such powers – **but** the President of the United States, through his Executive powers vested in the Constitution does. The President is empowered by the Constitution to make personnel decisions within the Executive branch. To deny him that power is a violation of the U.S. Constitution.

The President can authorize DOGE to review personnel and expenditures within the Executive branch and make recommendations for changes. President Trump can then authorize the recommended actions at his discretion under the provisions and limits of the Constitution.

So, let us review the recommended actions and their legality especially in light of the waste, fraud and administrative mismanagement in Federal expenditures reportedly uncovered by DOGE.

Response Continued:

In the 1980s, Bill Clinton fired 377,000 federal employees as part of an effort to reduce the costs of the Federal bureaucracy. Barack Obama took steps to reduce the costs of the Federal government as well. Biden authorized the firing of Federal employees and the discharge of military personnel if they refused to "take the job". What is the difference between their policies and the DOGE recommendations to President Trump? The answer is simple – Follow the Money!

Government employee unions did not exist in the 1980s. Now, with the shrinkage of US manufacturing and union membership, unions have made significant efforts to unionize federal employees. These unions collect member dues which have become a vital funding source for democratic candidates and PACs. This is why we are seeing the political theater from the Democratic party, unions, federal employees, cross-pollinating NGOs and aligned parties.

As we have seen, the previous administration supported work-from-home initiatives supported by these unions, including a new collective bargaining contract which codified and protected work at home employees. Where is the oversight of these employees to assure they are working and that they are providing the services to the American public?

Response Continued:

Yes, some jobs will be lost, but ask yourself:

- who has the power to create or cancel jobs under the Executive branch – the Senate, Congress, the Judiciary, the President, his department heads or unelected administrators?
- is the purpose of the Federal government to provide needed services to the American public or is it simply to provide jobs?
- are all of these jobs necessary to provide those services in a timely manner or are they to provide those services at the convenience of the federal employees?
- who is responsible for managing federal employees and assuring that they are delivering those services in a timely manner during assigned working hours?

Response Continued:

First of all, the power to create or cancel jobs under the Executive branch is Constitutionally reserved to the President in the exercise of his powers – not the Senate, Congress, the Judiciary, his department heads or unelected civil servant administrators.

Secondly, I think that we all agree that the purpose of the federal government is to provide needed services to the general public – it is not simply a jobs program. However, some administrations have chosen to use it as such, but those jobs are not guaranteed in perpetuity across presidential administrations.

Thirdly, I think that we can all agree that government needs to be responsive to the needs of the public – expanding or contracting as those jobs are necessary to deliver necessary services in timely manner. For instance, our need for stable managers and stable personnel has diminished, but we do need auto mechanics, astronauts and nuclear physicists.

Response Continued:

- ▶ Fourthly, while we do not expect the President to make individual employment decisions, we do expect him to delegate those responsibilities to Executive branch executives and administrators beneath him. Their actions are generally under the oversight of the President – not the Legislative or Judicial branches. They are however expected to act in the best interest of the public and in accordance with applicable federal employment law.
- ▶ The funding of the Executive Branch, like all of the Federal government, is a power limited to the Legislative branch, not the Executive. However, this power is limited to general funding limits set in the Federal budget. It is no longer line item specific, so funds are set aside for particular agencies as a total amount unless specific funds are allocated by the Legislative branch for special project needs. In general, expenditures within that agency are allocated by the Cabinet head and his administrative staff.
- ▶ However, as we have seen with the USAID revelations, many expenditures were allocated by unelected bureaucrats who are often cross pollinated from special interest groups and NGOs. We have also seen “blind” transactions - funds allocated and checks written without notation on their purpose – an action which would cause a non-governmental entities third part audit and IRS issues. Whether they were sloppy bookkeeping without oversight or intentional policies to hide expenditures, we do not yet know, but either way, they are improper and bad policy. Are we supposed to let those possible waste and fraudulent expenditures remain? Why would those who oppose DOGE support and protect those who would intentionally perpetrate such policies?

Is there Judicial or Legislative oversight over the President or his administration's actions including those undertaken under the recommendations of DOGE?

- ▶ Absolutely, but only in cases where the President or his administrations contradict the Constitution, it's Amendments or Constitutionally compliant Federal law. Under our Constitution, Congress can pass laws which limit or expand Presidential powers as long as they do not contradict the Constitution and its Amendments. In turn, the Judiciary can negate those laws or actions which are not in compliance with the Constitution and its approved Amendments.
- ▶ So, as long as the President is executing his executive powers as granted to him by those documents, neither the Legislative or Judicial branches may interfere or negate his actions. However, just as there is a danger of the Executive exceeding its granted authority, there is a danger that the Legislative or Judiciary exceeds their Constitutionally granted powers.

However, despite Chief Justice Roberts' assertions that there are no "Democratic " or "Republican" judges, the truth is far more evident. Judges have their personal political viewpoints which do affect their rulings in matters of law, rulings which cannot be appealed or overridden if they are a US Supreme Court Justice.

Judges are not politically agnostic.

After all, all Federal judges are:

- Nominated by the President of the United States. All Presidents therefore nominate candidates to the Federal Judiciary (including the US Supreme Court) which they feel align with their political views and accordingly will decide in their favor on matters before the court during their administration and into the future during their life-time appointment.

Submitted to the Senate of the United States for review and approval. The Senators of the Judiciary committee reviews these candidates and their body of jurisprudence in the lens of their political interpretation – not whether they are really qualified by temperament or legal acumen. If they were, Robert Bork would have been sworn in as a US Supreme Court Justice and in my opinion, Elena Kagan and Emily Jackson would never have been.

Demonstratively prone to make their decision to continue to serve or retire based on their political viewpoints and their opinions of the current President and his/her policies as well as their views of a projected new President.

When the light comes on Cockroaches scurry to hide.

- ▶ What are those opposed to DOGE afraid of ? They are afraid that DOGE will bring transparency to the waste, inefficiency and theft perpetrated by the “Deep State” and liberal elected officials such as:
Slush funds created and held to support liberal policies.
- ▶ The cross pollination of federal agencies, NGOs and unions with employees which assure the implementation of preferred policies and the steering of money without oversight.

Examples of what DOGE has reportedly uncovered:

- ▶ Federal funding of various LGBTQ related initiatives in foreign countries.
- ▶ \$ 30M in payments to leading liberal US newspapers like the Washington Post and New York times.
- ▶ \$ 2B to a non-profit headed by Staci Abrahms in late January. This Non-profit only had \$100 in the bank before this grant.
- ▶ Slush funds set aside in different agency budgets.
- ▶ Manual systems for processing Social Security applications in an underground bunker.
- ▶ Over \$30K/month for several years to a federal contractor to process software changes and updates for the HHS Dept. A DOGE software engineer processed these same changes in a matter of 10 days.
- ▶ Over 4,000 illegal residents with the same SS number receiving SS benefits.

DOGE Examples Continued:

- ▶ \$ 11K/month for 13 years to Michelle Obama for White House gardening services.
- ▶ \$ 2.7 T in improper Medicare and Medicaid payments, including to individuals overseas who were not eligible to receive them.
- ▶ Millions in US Treasury checks issued without any notification on the purpose of the expenditures and the budget appropriation to which it was tied.
- ▶ Failure of the US Department of Defense and other agencies to pass an audit for several years or explain what budget expenditures were tied to.
- ▶ \$4 M spent to build an EPA Museum that only 1200 people have visited. This museum also requires an annual expenditure of several hundred thousand dollars to staff and maintain.

Federal leases for buildings which have largely been unoccupied by Federal employees since the Covid lockdowns of 2020.

DOGE Examples Continued:

- ▶ Tens of thousands of Federal employees who are resisting coming back to their workplace because they prefer the freedom of working from home.
- ▶ Government contracts with public sector employee unions which granted the unionized federal employees the right to work from home.
Federal employees spending more time on union activities than doing the jobs for which they originally hired in violation of existing Federal law.
- ▶ Federal employees actively engaged in campaigning for political parties through “ voter registration” activities during working hours.

The Constitutional Crisis:

- ▶ Since its inception, our Constitutional Republic has continually struggled to maintain a balance of powers between the Legislative, Executive and Judicial branches to assure the preservation of our nation and the rights of its citizens. For it to succeed its branches must be comprised of persons of good will who truly seek to serve the People by Protecting and Preserving the Constitution of the United States.
- ▶ How do we rein in a Judiciary that exceeds its powers in an effort to interfere with the Executive branches exercise of its constitutionally delegated duties?
 - ▶ Do we seek to pack the Supreme Court to get the imbalance in the jurist that we prefer? No
 - ▶ Do we seek to clarify by law the exact limits of the power District Judges have to order restraints on policies beyond the scope of their districts? Yes
 - ▶ Do we require litigants to place funds in deposit prior to their hearing and forfeit those funds as well as additional amounts to reimburse the government for its legal costs if the claimant loses their case? Yes, enforce it.

Constitutional Crisis Contd:

- ▶ How do we rein in an Executive branch that seeks to overstep its Constitutionally delegated powers and possibly seeks to subvert the powers of the Judicial and Legislative branches.
 - ▶ The Constitution already provides tools – the Amendments process, the power of the purse, Congressional overrides of Executive Vetoes, Impeachment and Judicial review to address these issues. But none of these must be exercised capriciously to preserve the trust of the People.
- ▶ How do we rein in a Legislative branch that seeks to overstep its Constitutionally delegated powers and possibly seeks to subvert the powers of the Judicial and Legislative branches through laws and procedures which threaten the separation of powers.
 - ▶ We must count on Judicial review of Legislative actions to assure their compliance with the Constitution and its Amendments and the free exercise of the people to elect their representatives.
 - ▶ Restrict the power of elected officials to seek private sector employment and interact directly with government officials within 5 years of serving in office.
- ▶ How do we rein in the true “unelected” officials in government who seek to maintain their influence and financial malfeasance without oversight.
 - ▶ Periodic reviews of activities and audits of expenditures with serious penitentiary consequences for those found to have betrayed the trust of the People.
 - ▶ The prohibition of federal employee unions or their power to make donations to political candidates, PACs or parties.
 - ▶ The power of Federal agencies to make grants to NGOs or contract with them.