

The State of the Administrative State: Trump's First 100 Days

(A Hard Look, Season 6, Episode 7) Transcription and Show Notes

Episode Title

The State of the Administrative State: Trump's First 100 Days

Series ID

- **Season:** 6
- **Episode:** 7
- **Series:** Hard Look

Episode Description

In our season final installment of the Hard Look Series this season, we take a focused look back at the first 100 days of Donald Trump's presidency—not through the lens of news headlines or viral clips, but through the quieter, often more consequential corridors of administrative law. Professors [Jennifer Selin](#) and [Chris Walker](#) join us to reflect.

Show Notes

Show Notes:

- Presidential Documents on the [Federal Register](#) (Updated Daily)
- Congressional Research Service: "[The Good Cause Exception to Notice and Comment Rulemaking: Judicial Review of Agency Action](#)" (January 29, 2016)
- [FDA v. Wages and White Lion Investments, LLC](#)
- [The Presentment Clause](#) (Article I, Section 7 of the U.S. Constitution)
- Presidential Action: [Restoring Accountability to Policy-Influencing Positions Within the Federal Workforce](#) (January 20, 2025)
- The Hill: "[Law Firms Divided Over Response to Trump Order](#)" (March 25, 2025)
- Presidential Action: [Ensuring Accountability for All Agencies](#) (February 18, 2025)
- SCOTUS Blog: "[Justices Will Hear Arguments on Trump's Effort to End Birthright Citizenship](#)" (April 17, 2025)

More From Our Guests:

- Jennifer Selin, "[Constraining the Executive Branch: Delegation, Agency Independence, and Congressional Design of Judicial Review](#)"
- Chris Walker, "[Congress and the Shifting Sands in Administrative Law](#)"

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Episode Transcription

[INTRO MUSIC]

Sophia Navedo (00:12)

Welcome back to *A Hard Look*, a podcast by the Administrative Law Review. I'm your host today, Sophia Navedo, third year law student at American University, Washington College of Law. On today's episode, we take a focused look back at the first 100 days of Donald Trump's presidency, not through the lens of news headlines or viral clips, but through a perspective that focuses on the decisions impacting administrative law.

[TRANSITION MUSIC]

Sophia Navedo (00:33)

Today, we are joined by two experts in administrative law and regulatory processes, Professor Jennifer Selin of Arizona State University and Professor Christopher Walker of the University of Michigan Law School.

Joining us a second time this season, Professor Jennifer Selin is a scholar with a unique blend of academic and practical experience. Her background includes advising policy makers and contributing to several nonpartisan initiatives aimed at strengthening public administration.

Also joining us today is Professor Christopher Walker, one of the foremost authorities on administrative law and regulatory policy. Before entering academia, Professor Walker clerked for Justice Anthony Kennedy and served in the Justice Department's Civil Division. His scholarship has deeply examined the interface between administrative agencies, the courts, and Congress and he has played a critical role in empirical studies of agency rule making practices. He's also known for his efforts to bridge theory and practice, engaging regularly with both legal and policy making communities.

Before we begin, please note that the positions, views and ideas advanced by speakers on this podcast are representative of themselves alone and cannot be fairly attributed to the Administrative Law Review, Washington College of Law, the American Bar Association, nor any of the organizations that the speakers may be affiliated with.

[TRANSITION MUSIC]

Sophia Navedo (01:55)

Let's start by framing the moment. Over the course of his first 100 days, President Donald Trump issued 143 executive orders, 31 presidential memoranda, and 42 proclamations. By

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the end of March, the president had already surpassed the previous 100-day record, which was held by President Franklin D. Roosevelt at 99 executive orders. To date, the administration has also rescinded a total of 111 executive actions from previous administrations, which was to be expected. All but five of those actions originated the Biden in an effort to expedite deregulation, the administration has also directed agencies to either repeal or amend its own existing regulations without public notice or comment.

Chris Walker (02:38)

I mean, I would just say kind of on the big picture, I mean, we definitely live in an era of presidential administration now. And that's not unique just to the second Trump administration, but you the vast majority of lawmaking at the federal level now happens through the White House and the administrative state and not through Congress and I think that's probably one of the big, big takeaways that I've seen so far in the first 100 days. Now, I don't want to suggest though that the current administration is like "ordinary"—I think this is an extraordinary first 100 days when it comes to executive orders and actions and we've seen just a flurry, not just in terms of quantity, but the amount of disruption and change we've seen is something that at least during my lifetime we haven't seen happen in the first hundred days of an administration.

Jennifer Selin (03:23)

I also think it's worth noting that President Trump is unique in that he served at one term, got to see someone from the opposite political party in power, and then he came back to the office. And I think there is something to be said about that, sort of seeing your policies in place, learning on the job during that first term, then watching things change, being outside of government for four years, and then coming back in. I think Trump definitely came into the office with a plan and was much more equipped to execute that plan than he was in the first term in part because he had that experience. And so I do think that that contributes to some of the unique nature of the executive action that we're seeing in this first 100 days.

Sophia Navedo (04:12)

Professors, given the volume of issuances and rescissions compared to previous administrations, has the traditional balance of power between the executive branch and legislative branch been impacted?

Chris Walker (04:22)

[Laughing] Yeah, of course. I think we have this kind of weird dynamic going on where like you have a Congress that is really not done much. And that's not—that's been happening for a while, but it really is a pretty quiet Congress. And so oftentimes you see the new

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presidential administration working with federal agencies and the career staff there to, you know, to push forward an ambitious regulatory agenda.

But here you actually see instead a presidential administration, both the office of management budget, but also this new department of government efficiency or DODGE actually beating down on the administrative state and kind of try to tame it through massive layoffs and threatened reorganizations and other types of things. And so in this sense, it's really different than like a Republican administration like Reagan, or Bush, or either of the two Bushes where they came into office and knew the only way we're going to be able to get lasting change through a presidential administration is to work with agencies and you know, hand in hand. The second Trump administration is really, I think, taking an approach of "you either work with us, or you're not going to be here tomorrow."

And I've got my doubts whether that's actually going to be effective in creating any lasting change. And it's going to obviously be very disruptive, to the administrative state as we know it. But that's a weird dynamic. I think you're hitting on a good point there, Sophia, of like, this isn't what we normally see in the first 100 days.

Jennifer Selin (05:52)

And I think it depends on what type of change you want to see. So Professor Walker just mentioned disruption. If the goal is simply disruption stopping some agencies from actually being able to achieve policy missions, then that is something that could potentially be long lasting if you're changing the makeup of those agencies and changing who works for them long term, in terms of how many people are there, and the capacity of those agencies to perform their jobs and not perform their jobs in terms of like implementing policy and making big changes, but just simply, simple things like knowing who to talk to or knowing what procedures you have to walk through in order to enact any policy, liberal or conservative.

And so, I think that in some ways, some of the changes that we see President Trump making have a potential to have a really long-lasting effect in that regard, in that it may be that for years after Trump's second term ends, that we see agencies trying to rebuild and really struggling with, the institutional knowledge that is required to be effective and efficient, which we definitely think president Trump and DOGE itself really wants agencies to be.

And then that also goes to this lack of institutional knowledge that potentially could result from some of Trump's changes. I think [that] also is something that Congress itself struggles with. So one of the reasons that we might be seeing a quiet Congress right now is because there is a lot of turnover, both in sort of leadership, trying to figure out who's going to be in charge of the parties and who's rising up as the new stars, who's leading the committees; how much expertise and institutional knowledge they have in terms of the legislative process, I think also plays into the moment that we're seeing today.

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Sophia Navedo (07:53)

You've both mentioned the “quiet Congress.” Is the “quiet Congress” the Congress we've seen in previous years or something new altogether?

Chris Walker (07:59)

So I mean, I think it is. I guess when I think about the “quiet Congress,” I think of the first Trump administration and I, you know, I worked the first six months of the first Trump administration for Senator Hatch on the Senate Judiciary Committee. And you know, you saw a very active Republican Senate majority in that first Trump Administration. You saw Senator McConnell, Hatch, and others really shaping personnel choices, that President Trump was making and even policy choices.

And I don't—again, I'm not an insider this time around, I don't get to see what's happening in the halls of Congress—but I, at least from an outsider's perspective, I don't see a Republican majority in the Senate that's working with President Trump to identify people that should be running the different agencies. I see a very quiet Republican majority that's doing what President Trump wants and nominees that are getting through that would not have gotten through in the first Trump administration. And I have a hunch that's just a matter of—that right now—that the Republican Party is President Trump and he's got a lot of power in that line. But I also think it's until his approval ratings dip a bit more, you know you're going to start seeing more Republicans in Congress willing to push back a bit. But I view it as a little bit different. Maybe Jen does it, but I see it as a different dynamic than the first Trump administration.

Jennifer Selin (09:21)

The partisan dynamics, I think, are definitely stronger. And in some regards, I think the opposition is weaker. I think the Democrats are less organized than they were during the first administration, just from sort of looking on the outside in. So, I would not be one to say that “no partisan dynamics are not at play here,” or that the Trump brand has gotten stronger and more focused in a particular way, maybe not policy-wise, but definitely it seems much more focused and the Republican Party seems to be going along with that. But again, I do, I personally do feel that there... that part of that, is that in order to really effectively push back, at a particular policy agenda or even to help advance and inform a policy agenda, you definitely need skill, expertise, institutional knowledge, background.

And in turnover, not just in terms of like members of Congress themselves, but also their advisors. Who wants to be in DC at this particular moment in time is very different than the first term. And that background stuff—like who's there, what they're doing, how they're feeling—all of that also plays into the working relationship between the president and Congress and executive agencies, quite frankly.

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Chris Walker (10:51)

Yeah, can I just make two points on... I'm not, I agree with like Jen entirely. It's also the first 100 days and like you got to kind of see how things settle in. But I will say when the Trump administration at the outset fired 17 inspector generals, for instance, that would have got a lot more pushback in a prior Congress, even a Republican majority Congress would have pushed back a lot more. And so I do think there's a... there are I think, some shifting sands in Congress right now as they kind of sort out the rule between the Republican majority and the President.

Sophia Navedo (11:24)

So, have there been significant efforts from Congress to collaborate with or push back on the White House's decisions regarding regulatory matters?

Chris Walker (11:33)

I mean, I think you're seeing some, with this DOGE Project of the Trump administration. A lot of what the Trump Administration wants to do, whether that's to shut down or reallocate the Department of Education or do some of the other major budget cuts that they're trying to do—at some point Congress is going to have to get involved.

And I have been kind of, it's been fun to kind of interesting to watch, some members of Congress really gravitate towards DOGE. There's a DOGE Subcommittee in the House now. And I mean, that's where I have my eye on it, from a regulatory form perspective is, is what, are we going to see in the House and the Senate on the side of assisting with the Trump Administration's kind of reorganization of the administrative state?

Jennifer Selin (12:15)

One thing that I think will be interesting to see is what happens over summer recess. So, when members of Congress go back for sustained periods of time to their districts as opposed to, you know, flying back and forth from DC to their districts as they do now and hold town halls now. But in the summer, there's more sustained interaction with their districts and, and with their constituents.

And so I think, this summer will be interesting on two fronts. First of all, because members of Congress will be interacting with their constituencies a little bit more than they are now, or a little bit closely, they won't be as removed. And second, there will have been enough period of time since Trump took office, and you know, Elon Musk is stepping back. Well sort of a lot of the policies regarding sort of reorganization and all of that should be coming out in the next month or so. So, the dust should be starting to settle, and it'll be interesting

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to see how much pressure members of Congress feel from their constituencies in that period of time.

Sophia Navedo (13:18)

Definitely, I'm curious to see how Congress decides to proceed over the next few months.

Shifting back to the executive orders and presidential memorandums we've seen over the last few months, one major theme is deregulation absent notice-and-comment. On April 9th, the administration published "[Directing the Repeal on Unlawful Regulations](#)," a presidential memorandum which directed the heads of agencies to repeal facially unlawful regulations. It's cited to the Administrative Procedure Act's good cause exception as justification for bypassing notice and comment. Are there any legal implications here?

Chris Walker (13:52)

[Laughing; directing statement to Professor Selin] I'm waiting to see if Jen wants to answer it first... or you don't—fair enough.

Jennifer Selin (13:56)

[Laughing] I mean, so I will say this strategy will definitely be litigated.

[Continues laughing]

Chris Walker (14:03)

Yeah, I mean, I'll talk about it a little bit. I mean, it's an aggressive move to kind of to say, I mean, there are kind of two different moves you're actually seeing right now. One is, as you mentioned Sophia, like, that they're saying that because the regulation is unlawful because it exceeds the statutory authority after [Loper Bright](#), that they don't have to go to the notice-and-comment to undo it. So that's one.

The other move you're seeing in a number of different areas is that they're saying that because the president has ordered that the rule be rescinded, that it has to be rescinded and they don't have to go through notice-and-comment.

And those are separate, but they're actually kind of related too, and neither, work under the current like existing doctrine. You know, [good cause exception](#) for notice-and-comment, are, not based on, on that. The idea here is that if it's unlawful, someone would challenge it in court, and you'd have it litigated. I mean, this is one path, right? And you have it litigated, and at some point, the Justice Department could decide they're not going to defend that regulation. And that's one way that you can kill a rule, is that you litigate it. And the Justice Department then like stands down and says, we're not going to defend it.

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If you don't do that though, you need to go through notice-and-comment. And so, in other words, like you're say, "well, the rule's unlawful, it shouldn't apply to me." Well, then sue right? I mean, that's the answer. And if you can't sue, you know, if you're not going to sue about it, then you've got to go through that process and get the feedback.

And I will say, when you are deregulating, when you are rescinding a rule, I think it's easier than when you're regulating. I mean I think that the steps that it takes for notice-and-comment are not as time consuming. But it's really important if you want to avoid that litigation risk that Jen mentioned—that if you're in the administration—that you spend the time to actually go through the notice-and-comment process to be able to withdraw that rule.

And I think we're going to see the courts very you know very, very quickly here push back across the country on this idea that you can withdraw a rule without going through notice-and-comment.

Jennifer Selin (16:01)

And I was going to say, it's worth noting that the good cause exemption is usually when you have good cause not to go through the rulemaking process, like the notice-and-comment process, not that you have good cause for the outcome.

So here, if we think of good cause being impracticable or unnecessary, or there's some sort of emergent circumstance, none of those seem to be at play here. Instead, what we have [are seeing] is "well we know what we want the outcome to be and we think it's predetermined, so there's no need,"—I mean, that's not exactly what Trump has said, but that's the general tenor of it; because if "we think that these rules, are not consistent with the agency's statutory mandate, then they should be rescinded." Then you [the administration] can say that, you can say that in the notice-and-comment process. That [current justification] seems to be of a different type of reasoning than is contemplated by the good cause exception.

Sophia Navedo (16:59)

Okay, you're saying there are two different interpretations at play here. Thank you for making that distinction.

So, what are the critical risks—or benefits—of rapid deregulation?

Jennifer Selin (17:10)

I mean, I think that the most obvious which goes to the whole purpose of notice-and-comment to begin with, is you really want to circulate the ideas so that you have a good sense of how the policy is going to impact interested persons and regulated parties. And

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without notice-and-comment, when you are rescinding or deregulating, you might have an idea of how various regulated entities will be affected, but you don't know. And the people who know the most about how deregulation is going to affect them are those regulated parties. And so even if you're working, even if you're trying to say assist something or assist a group of a regulated entity, or you're trying to help interested persons pursue their objectives more effectively and efficiently, you may not have enough knowledge about how they operate in the real world.

And so, the notice-and-comment process actually really does help that. It encourages agency to get a broader perspective of the effects of their action in the real world. And so, I think that that's one of the big consequences that I see; is that there might not be enough discussion about the effects of the deregulation. And so we might end up in a world where there's more uncertainty, there's more error, there's more mistakes. But that's my perspective. I'm sure Chris has others.

Chris Walker (18:29)

No, I mean, think that's entirely right. I completely agree with Jen on this issue of why it's so important to go through notice-and-comment and why it's so important to have arbitrary [and] capricious review of decisions to change agency policy. And you see that earlier this year, the Supreme Court issued a decision in [FDA v Wages and White Lion Investments](#), which is a case about the FDA not approving certain vaping products.

But in the middle of the opinion, Justice Alito comes in and says, you know, there's a reason why we have this doctrine called the “Change in Agency Position Doctrine.” And a few reporters reached out and were like, “what is this?”

[Joking] I was like, it's brand new. It's not new. It's been around forever.

Jennifer Selin (19:09)

[Laughs]

Chris Walker (19:09)

But it's a new name for this—but it's important to kind of think through what the Court's doing here. They're really highlighting the fact that when an agency decides to change its position, which includes when agency withdraws a prior rule, courts are going to take a little bit harder look. You know, they're going to ask: “did the agency have good reasons for the new rule; did the agency consider reliance interests?” And that kind of gets to what Jen was saying about “what does the industry think?”

[Courts will ask] “Are there reasonable alternatives to completely withdrawing the rules; is there something they should have done in between?” And the reason why the

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Administrative Procedure Act expects, kind of this recent decision making is because we care so much about predictability, stability, and fairness in administrative governance. Like we don't want a world where every single change in presidential administration leads to these 180 degree changes in policy. Unless there's a reasoned decision for it. And so it's extremely important to the regulated public that we go through notice-and-comment and that the agency is really thoughtful about why it's going to change its position.

And the Supreme Court was really harsh on the first Trump Administration in a number of cases where they didn't do a good job, where they [Trump Administration] said, "it's just unlawful; we're not, we're not doing deferred action for childhood arrivals anymore in the immigration context." "That's not enough," the Supreme Court said. You've [administration's] got to actually engage in considering the reliance interests, looking at alternatives, and otherwise show us [the Court] that you've actually engaged in reasoned decision-making on that front.

And so I don't think it's just a legal requirement of the Administrative Procedure Act. I think there are really good rule of law values for why we require agencies to go through notice-and-comment and to otherwise engage in reasoned decision-making.

Sophia Navedo (20:49)

That's actually a really great segue into my next question, which is how much should the President be considering the Administrative Procedure Act given that the executive branch—through the agencies—is subject to the APA?

Jennifer Selin (21:01)

I am going to echo the sentiment one of the things that tripped the first Trump administration up was not taking enough time to follow the procedural mechanisms that are in place for the executive branch more broadly. People have cited Trump's poor litigation record with respect to getting his agenda through the courts. And one of the reasons for that is simply that the first Trump Administration did not take enough time to do things the right way. Just taking pure policy out of it, like, just follow the rules and you generally will have more success.

And so, I do think it's incredibly important for this president in this term to do that. It's for every president, obviously. And it remains to be seen about whether that's going to, whether that part of the way Trump operates is going to change in the second term.

Chris Walker (22:01)

Yeah, I would, add to that—I fell in the first term. Some of it was just—this goes back to what a Jen's big framing points at the beginning—is the Trump Administration, like, has learned a lot from the first term. You know, I think they ... weren't as organized, it was kind

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of chaotic. Now I think it's very organized chaos as opposed to kind of just chaos and there's much more structure along these lines. And I actually see their moves, a lot of them, this presidential administration, actually more intentional in not following the Administrative Procedure Act and other requirements. And I think some of that's a vision of a unitary executive... that's, that's very robust.

Maybe I'll just kind of pause here; and you know, when we talk about the word unitary executive theory, the conventional debate, is that the president—as the head of the executive branch—has executive power and has to faithfully execute the laws. Right? And so when we usually talk about it, we think of it in the context of the president having the authority to fire and hire the heads of agencies and particular fire the heads of agencies.

This second Trump Administration, though, I think views unitary executive theory is more than just that. They actually view it as the ability to act on behalf of the agency, to order the agency to do what the president wants. And that's a very different vision, in my view, of unitary executive theory. And I think they're really pushing that vision in a number of different contexts. One is saying “you don't have to go through and notice-and-comment because the President has ordered you not to go through it.” Another is saying, “we're not going to spend any money that Congress has allocated because the president decided it's not a useful approach.” In other words, the President's kind of directing, not just saying, “hey, agency head, do this, or I'll fire you.” The President's actually saying, “do this because you're legally required to do it because I'm the President.” And I think that's a kind of, I think we're actually in a kind of a unique moment in our separation of powers along those lines.

And I'll end by saying why that's unique is most of us, like the conventional view and administrative law is: that “faithful execution of the law” means “faithful execution of the law.” [Laughs] In other words, Congress is the one that gives the president the power and the obligation to put into effect the laws that Congress passes through bicameral presentment. And so, the president's duty is to actually faithfully execute those statutes, not to do whatever the president wants to do that may be contrary to those statutes.

And I think that's a moment in separation of powers that we're grappling with where the lines of what we call unitary executive theory, in my view, are getting blurred from a, “of course the president's got to be able to control the executive branch to make sure that they faithfully execute laws that Congress has passed”—that's my view of unitary executive and what I kind of subscribe to as a policy matter—to a “the president can do whatever the president wants because the president was elected by the people and doesn't actually have to faithfully execute the laws that Congress passed.” I don't think that's going to fly at the Supreme Court, but I do think it's part of the current Trump administration's approach to presidential administration.

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Jennifer Selin (25:19)

Yeah, and follow up on I think there are three things that Chris said that—this is what I love to study, so this stuff is right up my alley.

I do think the Trump administration is being very, very strategic in terms of how they're rolling out different initiatives and how they fit together in an overall scheme. And I think sometimes it is quite brilliant. Each piece of the puzzle builds on the next to pursue this overarching theme of the president as “CEO” essentially, of the executive branch. And if we think about what a CEO does, like what their responsibilities are, say in the private sector, you have: the CEO is in charge of the personnel of the organization; it's in charge of the organization itself in terms of how it looks, how lean it is, where it's located, things like that. The CEOs, in charge of the budget. The buck stops with the CEO. Then the CEO also drives the product that the organization is pushing and how that product is marketed. And if you think of these five things, personnel, organization, budget, product, and marketing, that is also how Trump is viewing the executive branch.

Now the big difference is that the executive branch is not a private corporation [laughs]. But if you see these executive actions that we talked about at the very beginning of this podcast, you can sort of slate them into one of these categories in terms of like: well, what is the product; what are the policies that the president wants to achieve; how are we going to be talking about them; Who is going to be talking about them; what does the organization look like; who's in charge of where the money is going and how it's working; who's working on various parts of this organization?

Now, also then to hit Chris's third point about [laughs] Congress and statutory law: many actions are brushing right up against or explicitly, intentionally, and strategically crossing the lines of statutory law, pushing the boundaries, and ultimately, I think, hoping that the courts will have to... *forcing* the courts to make a rule on some of these statutory provisions that maybe the President doesn't like very much.

Sophia Navedo (27:40)

Right, so we're seeing very methodical planning. And that theme actually brought me back to one of the very first episodes we recorded this season with Professor Selin about Project 2025. Professor, do you see anything discussed in that playbook today? Do you think it's driving what we're seeing?

Jennifer Selin (27:55)

Yes, I think some of the ideas in particular in terms of the management of the executive branch and obviously Schedule F, which “Policy Career” as it is now called. These sorts of things are being rolled out pretty much as discussed. Now there are changes, and it's only the first 100 days. So, we'll see where things go.

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And it's worth noting that every president in their own way tries to improve the efficiency and the effectiveness of government; and that, you know, many presidents have established task forces or committees or brought in outside experts or business people to try to help arrange government in a way that can eliminate waste and ultimately serve the people better. But one of the problems that all of those groups and presidents have faced in the past is that the federal executive branch and administrative agencies are incredibly complex. They perform a variety of tasks in a variety of different ways. And they often perform those tasks precisely because the private sector can't do it as well or market forces just wouldn't provide the right incentives for effective, efficient and quality service for the American people.

And so there's often this tension between what we would see private corporations or outside forces—what works outside of government, and what works inside of government [may not match]. And often is the case, in order to really understand the patterns of what works in government and what doesn't, you need years of expertise and study and a nuanced understanding of various agencies, policy missions and operations and the legal constraints under which they operate, which are very different than the legal constraints that the private sector operates under. And if you don't have... if you're not building recommendations for change based upon those things, then ultimately the proposals for change are not going to be as successful as they would be otherwise

Sophia Navedo (30:23)

I know you've both touched on surprises we've all had in the last 100 days, but are there any other significant actions that you didn't expect?

Chris Walker (30:31)

I mean, I'd flag two that I think are somewhat unique.

The first is that the very, very strategic structured focus on grants, is noteworthy. It could definitely be a whole separate podcast, maybe with someone like Professor Eloise Pasachoff [Georgetown Law], Matt Lawrence [Emory Law], or Zach Price [University of California Law San Francisco] or something like that. But I do think that the focus on grants is—in my view—a welcome development in the sense that I think so much of federal policymaking happens through grants and there's a lot of politics that go into grants. Of course, my general overall theme is the same, that it's chaotic and the way it's being approached; it won't have lasting change and it's causing a lot of really massive disruption with respect to innovation and research and other things. But I do think it is good for Republican administrations to focus more on grants. It would be great if it was more surgical and thoughtful along those lines.

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The second one I'm not a fan of, which is the President targeting law firms and other individuals for prosecution and enforcement through executive order. I think this is the type of stuff that just kind of goes to core rule of law values, especially when it comes to lawyers and law firms. You know, they [lawyers] have a duty to, you know, our whole system is an adversarial system where we should encourage lawyers to stand up for the rule of law and take on unpopular clients. And I fear that if the shoe ever gets on the other foot, it's just major damage to our separation of powers and to the way that we work as lawyers.

So those are two other kind of developments that I've had kind of kept my eye on and been watching as they've kind of unfolded.

Jennifer Selin (32:08)

The one that didn't surprise me in terms of I could sort of see it coming, but when I read it, it kind of shook me, was the accountability of federal agencies, executive order that pushes independent regulatory agencies forcing apportionment discussions to be with the President—a litigating authority to be more in line with presidential actions, regulations, communications. There are statutory provisions throughout the US code that protect these agencies from some of the things that are in that executive order. And it just, just to see it all in one order, just blatantly disregarding those statutory provisions was very jarring to me, because it swept up almost all market-based regulatory commissions with the exception of the Fed.

One of the reasons that we have independent regulatory commissions—from a policy perspective—is that we want politicians to credibly commit not to interfere in the markets because we know what the effects of that can be. And so I'm interested to see how this one plays out.

Sophia Navedo (33:26)

What should we our eye on as we continue to assess the state of the administrative state?

Jennifer Selin (33:32)

I would go back to something that Chris said at the beginning and that we talked a little bit about: Congress. Like I'm looking to see how Congress responds. And I feel like Congress is going to respond in some way, but I just, I think it'll be interesting to see when, where and how...

Chris Walker (33:52)

Yeah, I completely agree. We got to see what Congress is going to do in response.

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Sophia Navedo (33:56)

Anything else you'd like our audience to think about?

Chris Walker (34:02)

Well, I mean, I would just say, we live in exciting times. Administrative law is always exciting when there's a change of presidential administration. This seems like a particularly exciting first hundred days. You know, some of it's frightening. I think it's important, though, to kind of keep the eye on the ball on where things are going. And we just said that Congress is a key part of it. But I will say the other key constraint is the other branch of government, which is the courts.

[It's] so important at this time to really, really be, you know, reinforcing the importance of judicial independence the rule of courts and checking the branches of governments when they exceed their power. And if things work right, and we'll see over the next hundred days probably—you're going to see a Congress kind of start to push back and, or work with the president, which would also quite frankly be welcome, if it's working together.

And you're going to see the courts continue to kind of monitor the involvement of both branches and how things play out. So those are the things I think courts in Congress are the, what I have my eye on beyond just what the executive branch is doing.

Sophia Navedo (35:06)

Litigation can take a long time, so when do you think we'll see significant action from the Supreme Court?

Chris Walker (35:12)

Yeah, I mean, I think they already are. I mean, we've got the [Birthright Citizenship Executive Order coming up to the court](#). We've got, you know, the Court's, I think, playing a pretty active role. You know, I think that the Chief Justice has been very consistent—as Chief Justice whenever there's a threat to judicial independence, he has spoken out for the courts. And I think that's really important right now. I mean, it's always been important.

In the last administration, there were threats to members of the Supreme Court and lower court judges that were appalling. And I think we're going to see that continue. It seems to be somewhat of the new norm. It's somewhat of a bipartisan norm of attacking judges and courts. And it's really important that you have someone like the Chief Justice really kind of speaking out whenever there's a threat to judicial independence, or quite frankly, the life and safety of judges.

That's something that I think, you know, is a key part of this discussion. You can't have an administrative state in the separation of powers if you don't have a court system that's

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willing to enforce the rules the Constitution and Congress—it's required for the administrative state to function.

Jennifer Selin (36:14)

And one thing that I think about quite frequently is that when we see things like attacks on judges or we see vicious rhetoric from various people in the media, it can seem that our government and our politics are incredibly divisive.

But if you go inside executive agencies and you see federal administration, for the most part, it's not like that at all. Everyone is just working hard to achieve their policy missions, uphold the rule of law, and ultimately help their agencies provide an important public service to serve the general public. And it does make me sad that that, because it's not

newsworthy and attention grabbing gets lost in a lot of the discussions about the first hundred days or the federal executive branch more broadly. The executive branch is made up of millions of people who are working very hard to serve the American public. And that's something that I always try to recognize. I tell my students, I tell people when I'm doing things like this that, that more recognition of that could go a long way in sort of easing the tensions that are exacerbated by divisive rhetoric.

[TRANSITION MUSIC]

Sophia Navedo (37:51)

With that, we'd like to thank Professor Selin and Professor Walker for their insights into this critical period of modern administrative law. These reflections not only help us understand where we've been, but also where the evolving relationship between the presidency and the administrative state might be headed.

The approach the Trump administration has taken towards administrative law has been referred to as “disruptive.”

Whether taken positively or negatively, that does appear to describe it well.

[OUTRO MUSIC FADES IN]

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We'd love to cover your questions on administrative law, so let us know what you'd like us to cover next season. Stay informed, stay engaged, and as always, thanks for tuning into *A Hard Look*.

[OUTRO MUSIC FADES OUT]