



## Episode Title: Election Outcome -- A Conversation with James V. Aidala and Mark Washko

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**Lynn L. Bergeson (LLB):** Hello, and welcome to *All Things Chemical*, a podcast produced by Bergeson & Campbell (B&C<sup>®</sup>), a Washington, D.C., law firm focusing on chemical law, business, and litigation matters. I'm Lynn Bergeson.

This week, I sat down with our two government affairs experts, Jim Aidala and Mark Washko, to get their take on the very eventful past two weeks post-election and seek their thoughts on what 2025 might look like, both legislatively and at EPA [the U.S. Environmental Protection Agency] administratively. With the Republican trifecta and some surprising Cabinet and EPA designate picks, we have a lot to discuss. We cover the election results, the transition period between now and Inauguration Day, and speculate on the remainder of 2025, a year that promises to be like no other. Now, here's my conversation with Jim Aidala and Mark Washko.

Good morning, gentlemen. Jim Aidala and Mark Washko, thank you for joining me today. We have much to discuss.

**Mark Washko (MW):** Good morning.

**LLB:** Before we get to our questions, I just wanted to give a shout-out to all of my friends at EPA, and in particular Dr. Michal Freedhoff, and to thank her for her extraordinary leadership and stewarding of something near and dear to me, and that would be TSCA [the Toxic Substances Control Act] implementation. I think her unfailing support for the team over there has been truly laudable, and if past is likely to be repeated here, I wouldn't expect current political leadership at EPA to remain so. Just wanted to say thank you, and we will miss you, and all the best.

Let's move on to the election results. We have a whole lot to discuss, gentlemen. Before the election, there was lots of talk about both houses changing leadership. We know that did not happen. Has that ever happened? Mark, do you want to tackle that one?

**MW:** Actually, good question, Lynn. That's something people were talking about was the House and Senate flipping control, and that has never happened. So people were thinking against history that something could happen that had never happened before, and it did not happen this time. It has never happened that the House and Senate have flipped control, Republican to Democrat and Democrat to Republican, in the same election.

**LLB:** Now, more than two weeks after the actual election, can we say the results are final, or is there still some fluidity there?

**MW:** There are still some results outstanding in the House of Representatives. Maybe we can start with what we know. We'll go with the House first. With 435 seats, the last count is 220 Republicans, 213 Democrats, two seats outstanding in California. One is leaning to the Republican, and one is a straight up 50-50 tie, so these results are not final. Given the best, if Republicans take both, that would be 222 to 213, which is still a very slim majority to go forward.

Over on the Senate, it's a little different. The Republicans picked up four seats, and they have a 53-47 advantage in that. There might be a recount going on, but I don't think that's going to change the results. So the answer is two weeks after the election, we don't have the final results, but we know who's going to be in charge. Both parties have had their leadership elections for the next Congress, so we know who will be in the leadership positions. What we don't know is who will be chairing all the appropriate committees yet.

**LLB:** Right. Is that recount the Casey recount in Pennsylvania?

**MW:** Yes.

**LLB:** Yes. That's not likely to change, as best as I can tell looking at the *Times* this morning.

**MW:** Correct.

**LLB:** How many new members of Congress will there be in the 119th Congress that convenes pretty soon on January 3, 2025?

**MW:** More than 60, which is amazing. Actually, it's quite a few. It's not the largest turnover we've had recently, but there were about 50 members that were retiring even before the election. Plus there were a few election results that turned over. So there are quite a few new members that are in town for orientation last week and this week and trying to get a feel for Washington, trying to set up office assignments, and there's a lot of activity going on right now in town.

**LLB:** No doubt. Let's spend a little time on the transition period between now and inauguration. Both of you gentlemen have been in and around D.C. during presidential transitions. Can you just briefly tick off for our listeners what happens in Washington between now and Inauguration Day? Mark, why don't we start with you?

**MW:** Sure. I'm glad to start on that. Starting the day after the election when we had an idea who the President-elect would be -- well, I'll start even before then. Both parties had transition teams in place and were preparing for the case that they were going to win so that as soon as the election was called, they could go into high gear and being prepared to name the people to serve in their administrations.

Two things are going on right now. One is the President-elect is trying to set up the people who are going to be in his government and name a lot of the people who will have to be either Senate confirmed or could be appointed without approval from Congress next year. And currently with that, Congress has unfinished business that they put off before the election, including two must-pass pieces of legislation. One is to fund the government. Funding for the government runs out on December 20. We expect another continuing resolution to fund the government into sometime next year. There is a question as to whether it will be a short term going into January, or whether it will go for the full year. Speaker Johnson indicated over the weekend he would like to do a short-term continuing resolution, which would put it in the middle of President Trump's first 100 days, so we don't know how that's going to work.

But also the National Defense Authorization Act, which sets military policy for the coming year, that has never not passed, and that is due -- that should pass by the end of the year. Those are two things. Plus, we expect Congress to act on supplemental spending for disaster relief because of all the damage from the hurricanes that were experienced. Those are the three things. But as was noted in some of the shows over the weekend, there is very little time to get all this done, so we'll see what happens. Congress is looking to finish up this year's business and preparing for next year, because as you noted in the last question, Lynn, there are going to be at least 69 -- over 70 new members of Congress next year, including nine new senators and 60 representatives -- who are trying to get settled for next year.

And one other thing I would point out, just on the dates -- and I'm sure most of our listeners know, but it bears repeating. Congress reconvenes the next session of Congress on January 3. The President is inaugurated on January 20, and that gives Congress a couple of weeks to get ready for the presidential inauguration as well. But, Jim, do you want to add? -- you've been in some of these transition periods. What would you like to add about some of the interesting things? I won't call it chaos, but busy time.

**LLB:** But it is.

**MW:** A busy time.

**James V. Aidala (JVA):** Yes. Well, like you said, Mark, and then when people behind the curtain -- a couple of things. One is things like what office do I get? Who gets the seventh floor of Cannon? That is -- no one knows there *is* a seventh floor because it's mostly the attic. But if you really have alienated -- I could use other words -- the leadership, you might end up up there. That's a sign, one of the early signs of your power and influence of your future as a member. So all that kind of stuff, everything from moving in and fighting over that, as well as the committee -- and more seriously, the committee slots and all -- as you said, they're not determined yet, but what committees you're on and things like that. So that's part of that chaos, if you will, or getting adjusted --

**MW:** Can you hold on for one second? I'm sorry, there's five floors in Cannon. I just want to get a --

**JVA:** Well, that's why the seventh floor is really bad. Got a point.

**MW:** Oh, you're just out of the building.

**LLB:** It's like a time out.

**MW:** There *is* no elevator for the seventh floor. That will put new staff in. It's like, "Hey, where's the boss go?"

**JVA:** Sixth floor, then. Yes, I stand corrected here. But the point is, there's an upper floor that no one wants.

**MW:** Understood.

**JVA:** And/or your other further -- it's just like if your committee assignment is -- I have no idea what they call it now. They probably call it the Gingrich Building or something, but it used to be called the Ford Building, down at the bottom of the hill, down by the botanical gardens and things like that. But on the other hand, you're away from the fray. So that's kind of nice. The boss never comes in; you can kind of relax a little bit. You don't need to wear a tie unless you know there's a meeting, and things like that.

But that was my day. I'm old school. Yes, all those transition things that you're correct about, even on the Hill. I have to say -- partly for the amusement of myself and the listening audience -- one of the best scenes on this is an Eddie Murphy movie that few people realize; it's called *Distinguished Gentlemen*. I won't go into too much detail, but he's a con man who gets elected to the Congress -- no comment -- and then he meets a lobbyist in the first week, like you're talking about right now. And he says, "Congressman, what's your position on sugar subsidies?" And he goes, "Well, I don't know," because he's not familiar with that at all. He says, "What should it be?" since he's talking to a fancy lobbyist. And he says, "Well, it doesn't matter to me, sir. If you're *for* them, I can get you money from the sugar growers. And if you're against them, I can get your money from the candy companies." That's the kind of thing that goes on, is initiation and introduction to Washington. That's again, obviously, a comedy and satire and things, but there's elements of truth there, too. That's what happens during this time on the Hill.

**LLB:** Just to round out, Jim, any thoughts on legislative initiatives that need to be finished up? What became of the Farm Bill, for example?

**JVA:** The Farm Bill had to get punted. I don't recall exactly what the end date that they punted it to, but whatever that is, they'll probably punt it again and then plan to work on it in earnest. Again, as Mark outlined, depending on committee leadership and everything on both sides of the Hill, but some changes will occur even among the incumbents and things. All that will take place for 2025, and I do think this time when they say, "This year, we will do a Farm Bill," it's a more serious likelihood of happening.

**LLB:** Speaking of new leadership, I think we were all a little bit surprised that President-elect Trump nominated his EPA Administrator as early in the process as he did, a gentleman by the name of Lee Zeldin. I know our listeners are very interested in learning more about the nominee for EPA, a former New York representative. What, in addition, can any of you tell us about Mr. Zeldin? Jim, do you want to go first?

**JVA:** Sure. I think we're all interested in that question, because I don't think many people know Mr. Zeldin, in terms of anything that he has to do with environmental issues, *per se*. That's not a knock. It's just a matter of it's not been part of his M.O. [modus operandi] or whatever phrase you want to call it. The good news is he is an unknown in a certain sense, in that he's not unknown to be, quote, "anti" this or that. Obviously, this Administration will have an emphasis on energy production. It's very clear, and publicly stated many times, less on climate kinds of investments and things, climate-related things. All those programs are

slated to be reformed, revitalized, or just totally gone. But again, that's to be determined. As an agenda, that's pretty clear, number one.

Number two, one thing that *is* less known about Mr. Zeldin, he comes from eastern Long Island, Suffolk County. In the world of -- for our audience, pesticides and chemicals -- it's actually the birthplace of the groundwater contamination by pesticides issue. Not intentionally, but there used to be a lot of potato farms out that way, and they used Aldicarb, a chemical carbamate, that was very good for controlling potato pests, but had some issues, shall we say? It's very potent, carbamate. Think of it as a kissing cousin of organophosphate, and those -- that whole class of chemistry is under more scrutiny nowadays. But anyway, it was determined that in fact pesticides *can* get into groundwater. In 1979, it was discovered out in that part of the world, in Suffolk County.

Believe it or not, before 1979, it was conventionally thought by regulators and everybody, quote, unquote, "that pesticides would not get into the groundwater because it would degrade within about two feet of the surface where they were applied." So that was a discovery. Think of anything that you have ever heard in the last 45 years about pesticides in groundwater as a potential problem, or issues, and data you need to be generated about that. That all started in 1979, in Suffolk County.

**LLB:** Interesting. I did not know that, Jim. So that's a helpful bit of historical information that sheds some light on Mr. Zeldin's possible priorities down the road.

**JVA:** Yes, and it may be something that is a -- and I forget that he -- I don't know the gentleman's age, but he may have only been six or something -- but the whole point is that he may have had to deal with that as a lawyer in that part of the world, right?

**LLB:** Exactly.

**JVA:** Old contamination, or some old lawsuits, or some old claims, or what have you, because the way it's been described, again, in the general press, is he was a practicing lawyer before he was a congressman. So that could be something that does leave an impression.

**LLB:** No, absolutely.

**JVA:** And if his grandfather was a potato farmer, he definitely got it.

**LLB:** Mark, any thoughts on Mr. Zeldin, anything you've picked up over the last several weeks?

**MW:** Absolutely. A couple of things that'll be interesting for *me* to watch is when he was in Congress, Congressman Zeldin was a member of two climate caucuses, a Climate Solutions Caucus and the Conservative Climate Caucus, which was trying to address climate change from the Republican side. He also served on a PFAS [polyfluoroalkyl substance] Task Force and indeed supported legislation to set limits on drinking water for two PFAS. We expect that to be an issue; that's not going away -- PFAS contamination and remediation. But also, given where Republicans seem to be on climate and Mr. Zeldin's support for addressing climate change, it'll be interesting to see how that gets addressed moving forward. We don't need to get into whether there's going to be a carbon border tax. There's a lot of discussion about ways of addressing it, but we'll see what happens if he's confirmed as EPA Administrator and where he steers the agency on climate issues. But those are the two things I would flag.

**JVA:** Well, then climate. Climate is going to be an issue, win, lose, or draw. Change everything that's been done up to now, have a market-incentivized version of something to address the issue, how to make it compatible with whatever they do come up with, with other energy priorities, whether you agree or disagree. But what *are* you going to do about the climate question and issue? That will be, as you just said, to be determined.

**MW:** In addition, companies have made or plan to make significant investments on various aspects of climate. You see -- you won't see many -- you'll see a couple of stories, but some companies will be resistant to just walking backward and completely ignoring climate as an issue. That aspect will be interesting as well, because one thing, as administrations change, we don't even get eight years now. Now there's just four years between party switches, it seems. It's very difficult when policies go from one way to another. The certainty that companies need to invest for the long term seems to be missing. Let's say it that way.

**LLB:** Good point. Are either of you picking up any rumors on sub-Cabinet positions? There's obviously a lot of chatter in D.C. about who's going where and who might we be looking at in the EPA leadership positions and elsewhere? Anything you gentlemen can offer?

**JVA:** I'll start there. Nothing that I've heard *per se* about Fred or Susan Smith or Jones or whoever about any of the positions, but generally watch the recruiting pool when there is a transition. I can speak to that. The answer is Senate staff, for whatever reason, they feel so empowered and encumbered of the now-governing party, as well as the House staff, not to be too senatorial, but the congressional staff that have worked on those issues are a natural talent pool for the subcabinet positions, number one.

Number two, in this case, because of Project 2025 -- and I'm sure we'll be talking about Project 2025 -- the number of people who have written positions and had some contribution to it -- and many are acknowledged explicitly in that document, and so forth. That obviously is, again, a potential recruiting pool, and whatever that's worth. Some of those are people who worked in the past Administration. That's the other big recruiting pool is if you were the Assistant Undersecretary, you learned about how to maybe *be* Undersecretary. If you were a Deputy Assistant Administrator at the political level, you might want to become the *Assistant* Administrator, which is one of my paths I took, for example. That's one of the things that you naturally have some -- it's not just because you get interested in the job, but you obviously have some qualifications out of the gate if you're in those kind of categories.

**LLB:** Mark, anything?

**MW:** Nothing. No, no specifics on people, but just one thing -- picking up, just looking at some of the announcements and nominations so far is, the people who have been nominated so far seem to be people who have been publicly supporting Trump and people who have even questioned support for -- the President-elect at some point seemed not to be in favor. It'll be interesting to see how far down that carries, because the President will have thousands of positions to name. And to Jim's point, the traditional talent pool was as described. I think that pool might be a little bit smaller moving forward, but we'll see how the positions get filled. It will be interesting.

**LLB:** Maybe you both can peek behind the curtain a little bit. Jim, you in particular, since you were at EPA and served as Assistant Administrator at OCSPP [Office of Chemical Safety and Pollution Prevention]. But what happens at EPA, and for that matter, other federal agencies, between now and the transition, and shortly after? Can you just set the stage a little bit about what might be going on at the federal agencies, and in particular, EPA?

**JVA:** First, you burn the files. No, no. Just kidding. Two or three things. One is, of course, you try and finish up things that you've been working on that you want to have finished. Obviously, it's -- you hope to get issue *X*, policy *Y*, decision *Z* out the door by the beginning of the new fiscal year, October 1. In government time, this is about the same. Okay, what do we really, *really*, really want to get done? One of the most interesting things in my observation was OMB [Office of Management and Budget] and the OIRA [Office of Information and Regulatory Affairs] office, the regulatory review office, will say, "Okay, folks, we're going to be wrapping up shop here in a couple of months. What do you want to get done? As you know, everyone's got to still play by all the rules, so what do you want to get done? Every agency of the government, you can send your top two -- underscore *two* -- things."

Each agency sends about 40 over, because every program -- and EPA wants to be seen as their thing is among the top two. Of course, the Administrator in EPA's case says, "I'm not going to decide among my children, because they all make a good point that this is the top two things for fill in the blank -- the Superfund program, the air program, the water program, etc." Each of the media programs puts in five to be part of the EPA top two.

EPA then sends many over. And I'm not -- a little bit of hyperbole, but that's kind of what happens. So OMB says, "Holy moly, I told you folks we only have time for *X*. You've now sent about 5*X* or 8*X* over, and we're going to have to sort that out." There's an evaluation process, and sort of a what can get done in time process. So that all those -- kidding aside about even if you took a list of the top two, not all those can get through the pipe. There's some element of that, and then what really matters.

I do recall, for example, that on the issue at the time, hot issue at my time, out the door, was human testing and whether we would issue some kind of pronouncement, rule, what have you, that would say, in effect, a clearing final -- apparently final -- decision on human testing and pesticides. That was not decided until 7:00 p.m. Friday before the inauguration on Saturday morning.

**LLB:** That surprises me not at all, Jim.

**JVA:** That's the kind of thing that goes on and hanging around the office to -- even everyone's said goodbye. Everyone is -- everything else is kind of wrapped up, for lack of a better phrase. You're waiting around getting a decision about whether it's a go or no-go on that from the Administrator's office, and OIRA, and everything else. That's part of what happens in real time, as you say, behind the curtain. Also, just more practically, this Administration has been less caught by surprise than the Obama transition to Mr. Trump the first time, where everyone presumptively -- well, not everyone -- *many* were presumptively assuming that Ms. Clinton was going to win and take over the presidency, so there wouldn't be a party transition. This time, they have been -- according to things that I've heard from friends and other sources -- that they were working on getting regulations in order and actually getting done in time to be outside the reach of the Congressional Review Act.

In English, it's an indecipherable thing that makes three-dimensional chess look straightforward --

**LLB:** That's generous.

**JVA:** -- But the bottom line is that in so many days, you need to be outside the review window of what Congress could then take an action on to reverse. And the first time Mr. Trump arrived, I think it was 20 something rules were reversed. In the history of that rule -- I'm

sorry, the history of that law -- beforehand, there had only been two in 25 years. So it was obviously a new thing, that this was a real creature, that Congress would exercise that prerogative.

EPA has been trying to get some things insulated from that potential, including some things perhaps in OCSPP and all that. They've been working on that. Those are some of the rules that got done by about June. So if they were done by June 1 or so -- again, because it's arcane counting rules of legislative days and again, I won't go down that rabbit hole -- but the question is, are there things that *can* be subject to the Congressional Review Act? Those are things, even though they may still make those final now, even either in the last few months or in the next remaining time, they would be subject to Congressional Review Act reversal, and that'll be some list. They'll just be part of the strategic what we leave behind for the next guys. All those kind of considerations, that's what you're going through now.

**LLB:** Let's move on to some of the key Biden-Harris Administration priorities. I think we've already touched upon them a little bit: climate, environmental justice [EJ], and of course, science integrity. Mark, you alluded to this -- actually, Jim, you did, too -- that these are not going to go away, with the possible exception of a priority on EJ, but they will be transformed fundamentally, particularly climate and science integrity. But could both of you speak to how you see those issues morphing down the road?

**MW:** One thing, I think, that some of our listeners, and perhaps some of the companies, are a little concerned about is what's going to happen to the funding on climate activities from the IRA [Inflation Reduction Act], for example. Will the funding dry up? Will it go away? Will Republicans repeal it? I think for those companies that are relying on or plan to rely on that, they will resist moving because when companies want to invest, they want to know that there's some kind of certainty and durability to that policy. We'll see how that goes. As far as EJ, I think there'll probably be a restructuring on that within the agency. But remember, President Biden, on day one, issued an executive order on EJ and climate change, putting a stake in the ground as those being his priorities. So that will be interesting to see how that plays out. I don't know. Jim, you want to add anything on EJ, climate, or something else related there?

**JVA:** Sure, a couple of things. One is on EJ. As you say, it'll be transformed. They'll face some choices, everything from the staffing of that office -- sometimes you might go for a symbolic thing. I'm not predicting anything necessarily, but there's an EJ office. Do you downgrade that kind of thing, just to make the point? Do you eliminate the office altogether? Things like that. Again, partly symbolic. Partly -- I could give you a smaller example.

There will be an emphasis on rooting out unnecessary federal advisory committees -- partly to save money, because budget -- we haven't talked budget cuts yet. But obviously, there's an expectation to have significant budget cuts. But what does that mean operationally? I do want to talk about EJ a second. In a certain way, for pesticides -- which is certainly a core audience for us -- for pesticides, farm worker protection -- that was started -- in a way, it's been on labels forever, literally. Obviously more awareness in more recent eras, meaning post-'70s, -'80s.

The first regulations were issued in '92-'93. It was one of the first things that I had to work on, even working the Hill to make sure the Hill didn't get too crazy on them. We lost a roll call vote to delay the regulations. One of the first things that happened when I got there in 1993 -- in '94. Anyway, it was an interesting issue, then and now. It's a big EJ issue, but one



that's basically evolved to be significantly, already, now -- the first part of any agricultural label, you'll see the farm worker requirements up front. It's a program that's been not ignored -- put it that way -- and revised in 2015.

There's some kerfuffle on a couple of things -- even during the first Trump years and settled in during the Biden years -- that may be renewed and revised further in the new Trump years. There are a few things like that. But fundamentally, the farm worker protection issue has been long-standing, in the good sense, insofar as EPA is paying significant attention to it. That will continue. They can call that whatever they want. It can be a derivative part of the Administration priorities, or it's just what FIFRA [the Federal Insecticide, Fungicide, and Rodenticide Act] is supposed to do under the provisions of the law. I would not expect that to be -- certainly not going away, and not even significantly degraded from the current time. But that doesn't mean that -- things you don't do can be part of an agenda, a meaningful agenda, from whatever point of view.

**LLB:** I agree, Jim. It's certainly a core to the worker protection standard. I could see it taking a very back seat, EJ writ large, in enforcement priorities and as a central theme in rulemaking initiatives going forward. But I think for OPP [Office of Pesticide Programs] purposes, EJ is very much a part of the worker protection standard, which has been a critical aspect of OPP's mission for a long time.

**JVA:** Also because of PRIA [Pesticide Registration Improvement Act] -- last PRIA --you're going to have bilingual labels for sure, by definition by law. I don't -- a little bit of what Mark was saying: you're not going to turn the ship of state around just because of some rhetorical flourishes of whatever party. But you've made the investments. You've figured out a way to get that out, everything from the sort of silly, but important, things -- like formatting your labels and everything -- as well as literally making sure the translations work. There's been an old issue on that question about then who's liable for the translation, and again, seemingly small but important implementation types of questions. That'll continue, and I don't see any less likelihood of having bilingual labels, for example, as part of the new Administration.

**LLB:** What do you both say with regard to the evolution of the science integrity theme that was very much a part of the Biden-Harris Administration? Science and the independence of science from political reach was an issue, I think, during the Trump One Administration. At least his detractors, and the detractors of the Administration, maintain that position. What can you comment with regard to OCSPP's science integrity challenges going forward?

**JVA:** I'll start on that. There's a reason political appointees are in charge and elections have consequences, and all that kind of language. It sometimes is hard to watch a decision that's rooted in science but is a separate political calculation or interpretation of what -- everything from what the statute means to what the science implies. I find that to be an issue that's often overblown, just because sometimes a science disagreement just is a disagreement over a policy disagreement and vice versa.

Again, that's not to demean any of that. But again, you've got staff -- by definition, you've got a wide number of staff. EPA's got 15,000 or so employees -- or more maybe now. I know they were trying to bulk up again. But the whole point there is, among that many people, you're going to have different opinions. You're going to have different scientific opinions, even among your -- just a "mere" quote, 23 scientific staff in your division or 12 in your branch. There's got to be a process to resolve those science disagreements. There's a funny line, often *blurry* line, between what's a disagreement and then there's a resolution by

the procedures that the division or the program uses, and even including outside review for pesticides, the Science Advisory Panel. Excuse me, Toxics has got an outside panel now also. But those are advice; they're advisory.

Again, to me, as a former political person -- and I'm sure some people thought I was always doing a political decision when it just -- whatever phrase you want to use, it made sense to me. And occasionally, by the way, behind the curtain now, yes, occasionally it *is* a political decision. "We can't go that far" or "We need to go further," even though there is a recommendation in the final briefing package that didn't quite go there. That's just part of why political appointees are in charge instead of some robot, driven by AI, I guess. Maybe that's the future. We'll just have robots deciding everything. I'm not sure that will be a better outcome.

**LLB:** In the demise of Chevron deference and the Loper Bright decision earlier this year, I can imagine the poorest line between science policy and political objectives might become even more blurry.

**JVA:** You're the lawyer on that one.

**LLB:** I see that in our future.

**JVA:** Yes, Chevron -- and I'm not sure that at the end of the day Chevron is going to make a huge -- or demise of it, if you will -- is going to make a huge difference, but it'll take time to get to that conclusion and get to that point. Obviously, there were regulatory decisions and regulatory outcomes *before* Chevron. There will still be those, after the recent opinion.

**LLB:** Indeed. Let's push on to Project 2025. Much has been discussed, in the trade press and elsewhere. I read Mandy Gunasekara's chapter on EPA. Is it a blueprint for action, gentlemen, or a wish list? What *is* Project 2025, and what do you make of it going forward?

**JVA:** I'll let Mark start with the polite answer to that question, and then I'll work around the edges.

**LLB:** All right.

**MW:** Taking a step up a little bit from just Project 2025, every time we get to a presidential election, people on the different sides have ideas about how they think the government should be, how its policies should be changed. I just want the listeners, who probably are aware, to understand that this happens every time there's a change in administration. Advocates on one side or the other have a blueprint, whether it's on a conservative side, a libertarian side, another side. There are always people bringing ideas, and that's how government changes, thought-provoking things like Project 2025.

Project 2025 has been out there. As you know, it was batted about a lot in the campaign. There were over almost a thousand pages with some interesting ideas. But it's a thought starter for people. It's not going to be radically implemented necessarily as written, but it's a guide for people to follow. Interestingly enough -- and I, too, read the chapter on EPA -- it does not say do away with EPA. It says restructure it, look at different priorities, and see how things go. A lot of that will come down to what the directions are from the White House, how the Administrator wants to implement it. But some of the things that we've talked about, whether it's climate activities, focus on energy, and things like that may be prioritized a little bit differently.

People shouldn't be surprised that a Republican administration wants to address environmental things a little bit differently than a Democratic administration. So I will say -- to answer your question directly, Lynn, it's a little bit of a wish list, a little bit of a blueprint, and see what happens. But it is not completely tossed aside, as some people would think, but it is not going to be exactly how everything is going to play out either, because politics is what happens within the realm of the possible, given the guardrails that are put on, remembering that we do have still -- and it's more than theoretical -- three separate and equal branches of government that can pull back on the others. That's going to be something fun to watch. Jim, you want to get a little bit more granular on that?

**JVA:** Yes, granular is one way to put it. I guess I would agree that somewhere between a blueprint and an agenda, and even if it was a "clear agenda," quote, unquote -- and I'm speaking more about EPA, because that's obviously what I know, and care, and speak fondly of generally, and then in particular reading that chapter -- and I've not read the other 900 pages, or whatever it is, of the whole thing. We've all heard about it. You've heard about it, you've read about it. Now let's maybe actually read it.

For the EPA side, it was, as you say, kind of the wish list of a bunch of things: criticism of this program, that program, almost obligatory, given the current political context about climate, excessive climate regulations and things like that. But it doesn't mean -- back to something you said earlier, especially about Administrator Zeldin, if he gets confirmed -- he's got a climate policy somewhere in there. He's got an issue about PFAS compounds. He may know about Aldicarb, as I said earlier. There are all these things. It doesn't mean that EPA goes away. Frankly, even if you wanted to get away from -- eliminate EPA, along with fill-in-the blank departments that are on some lists, you'd have to create it, because you have these laws that have to be implemented.

I do find interesting on some of the Project 2025 largely, things like "Let's get rid of the Department of Education." Half of what -- I'm just reading about that -- in particular, granularly, if you will, that half the people at the Department of Education are the people in charge of collecting student loan debt. You probably want to make sure that function of government still exists. Whatever you think about student loans, and forgiveness, and anything else about it, you've got to have some people in charge of the collection.

We just read recently the new intended appointee for the Department of Energy (DOE) is a person very familiar from the natural gas and oil production side. Okay. That's part of the agenda. Elections have consequences. I get all that. Over, I think, more than half of the budget of DOE, if I understand it right, is spent on nuclear weapon development, and control, and waste cleanup. I don't know if that gentleman knows that's what he's going to be spending a lot of briefings on, about nuclear bombs and nuclear waste cleanup. But that's part of the current system. And even if you got rid of the DOE, someone's going to have to be in charge of all those -- at least I *hope* to have someone to be in charge of all the nuclear bombs, and things like that.

That's the kind of thing, Mark, that's part of what you were talking about, where the function of government is still going on, whether it be by -- and including division of power among the branches -- but also it's just work that's got to get done. I especially like to think about whether Mr. Musk -- I predict he won't last long, because the first time some Deputy Assistant something under something someone else assistant is going to come in from the White House and tell him that whatever brilliant idea he just had can't be done, because "Here's the following 15 reasons in 23 memos." He's going to get a little frustrated and lose attention.

Does it mean he won't be effective? Who knows? I think, Mr. Musk could -- all the agenda things, Project 2025 and elsewhere -- will have an impact, but we don't know. What I've told people is things that have become *the* issue or *the* priority, *the* way of quote, "being the first marker of government reform" or whatever phrase will be used in the first six or eight months, those are possible. So if EPA was the first thing to be reformed, versus Department of Education or something, it would have a bigger impact. But by definition, we don't know what's going to happen in the next first six or eight months, let alone the next 18 and 24 months. It's a little unclear. Again, it's an agenda, it's a platform, it's a blueprint for Project 2025, but it's not clear which among those 900 pages are going to be the ones that really become in any sense of the word operational.

**LLB:** One of the points in Project 2025 was downsizing EPA, no matter which way you look at it. I guess that's always easier said than done, Jim. You're very familiar with the process of downsizing, and talk of Schedule F, and the failed -- never implemented change to the Civil Service protections back in 2021 and '22. But I think what I'm hearing from many of my friends at EPA is just a lot of anxiety, both with regard to what a reshaped EPA might look like, where might it work? There's talk of moving it outside the District. As has been noted by many, most EPA employees work outside the District now, because of regional offices and so on and so forth. But what are your thoughts about the probability of that happening, the challenges to moving forward expeditiously, if at all, with really restructuring EPA in a big way? And how might that affect what we do here at Bergeson & Campbell in the Toxics Office in particular?

**JVA:** I think the biggest immediate impact is what you touched on: fear and anxiety. The staff will have more of a concern about worrying about could they -- what you just said -- could they be moved to Texas or something? Could they be -- I'm told the biggest concerns are, are we going to have to move as an office, and are we still going to be allowed to do remote work? Yes, practical, real, day-to-day things would have an impact on employees' lives. I get it. That makes sense. But it's not going to be whether or not the budget is this or that or the other.

Again, I think a lot of people -- with all due respect again, and I speak very fondly of my time as an EPA employee. We all think -- whatever job we have -- we all think it's a pretty important job. That's why we're there, in part. So if you're a Branch Chief in some part of EPA, it's pretty important, because you're the Branch Chief or something pretty important. It's one of the environmental laws in the country. Again, that's important, literally, figuratively. Does that mean I'm going to be targeted if they come out for trying to reform, and change, and find Schedule F, and no one's got protections? First of all, to really do Schedule F, you're going to need a law change, not an executive order. But again, I'm not the lawyer. I'll let others fight that one out. But I'm pretty sure you do.

The civil service system was started under President Chester A. Arthur. If you can tell me who was he following after, whatever, I'll give you a nickel. But it was 1883, and it was only because Garfield got assassinated. Garfield's biography is a very interesting one. I won't go there. But as a historical anecdote, apparently when President Arthur was told he was now President because then-President Garfield had died, he literally cried because he felt so unprepared for the job. But he did do civil service reform in 1883. Anyway, it's been a long-standing program.

Change that lets you move people around as SES [Senior Executive Service] folks -- that's brought to you by Jimmy Carter in part of his reforms. Again, it wasn't a Republican idea to do the SES moving around part, but it's also just really not been done much. So even

moving around SES-ers becomes a little more difficult. But it's not a new idea that we need to have more loyalist people in charge of the important parts of the bureaucracy. Nixon had a gentleman who figured out a way to try and do it, even under the law existing in 1971. That came out in the Watergate hearings. There are ways, even with existing civil service protections, to move some people around, but not as many as you could under Schedule F. I just don't think Schedule F's going to happen anytime soon. And his biggest impact is going to be scaring people, literally scaring and making them anxious. That affects outputs. The biggest thing --

**LLB:** Well, for sure, yes.

**JVA:** The biggest thing for Toxics and Pesticides is going to be the budget, the big budget question, because these are two parts of EPA we love dearly, work with daily. They have to do stuff; they have to get stuff out the door, or else you don't get your permit to sell a pesticide. You don't get your authorization to introduce a new chemical. If those people aren't there to say yes -- whatever we think. One of our big jobs for clients: to facilitate and understand the rules, and how to engage, and all that kind of thing. If they didn't exist, then that's a bigger problem. In pesticides, for example, we know PRIA's been an issue, PRIA funding, PRIA staffing, just having the bodies there to move the paper, even if there's no controversy about the regulatory question that may be at hand. But it makes it hard if there's nobody there to answer the phone and sign the approval. Answer the phone -- again, I'm old. That's old school. But whatever they do, whatever they do digitally.

**MW:** People don't call, they just text, Jim. It's only texting these days.

**JVA:** Thank you. Thank you. Mark's younger than I am, as you can tell.

**MW:** I've got teenagers that don't even call. They only text me, but that's a whole separate thing.

**JVA:** Yes, really.

**MW:** But you raise a great point about the budget, the staffing. And that's something where we as advocates have a role, especially with the 70-plus new members of Congress. Translating talking points on the campaign trail from "Let's do away with government agencies," to whatever, to understanding how they work. There's been a lot of pressure about, "Let's cut EPA back." Then when you explain how chemicals get to market, and then it's like, "Well, what about chemicals?" Then "Let's talk about what are the products that they support?" Almost everything in commerce is touched by chemistry. If you do away with the Chemicals Office, there's your innovations for batteries, for cell phones, for anything with technology, for cleaning agents, for whatever. Having people understand that EPA actually needs to exist and function. That's sometimes something that we, as advocates, have to do is to make sure that the incoming representatives and senators understand the importance of that and what it means for the economy as we go forward. Yes, that's part of our role, too, is saying, "Hey, these things are important." Does that mean that there aren't parts of EPA that can't be changed to fit what the incoming administration wants to do? No. But to your point, doing away with the Chemicals Office would be very shortsighted.

**JVA:** Yes. Let me add one thing, too. I forgot to mention it. Somewhere, among all the things we've been talking about, you're going to see as part of the reaction, whether it be the new Administration, new priorities, threats of budget cuts, changes in decision-making -- however science-justified or otherwise -- you're going to see an explosion of litigation. Lynn, you're the lawyer. You can maybe talk about that, but I certainly would expect --

**LLB:** Oh, yes.

**JVA:** -- advocacy groups, of whatever stripe, still pushing for more litigation, which is a little bit quieted in some senses of the word, but especially for our pesticide friends. Again, given the ESA [Endangered Species Act] space, I think you're going to see much more of that.

**LLB:** No, I completely agree. We've seen an uptick already, and there's always been litigation on all major initiatives under TSCA implementation. That will not change. It will, however, become more intense.

Last question, gentlemen, as we're running out of time. Why don't you both speculate on what the first 100 days of the Trump Administration is going to look like from a congressional perspective? Any speculation on that critically important time? Mark, you want to go first?

**MW:** Sure. With the curveball recently about how the government's going to be funded, a good part of the first hundred days could be taken up with funding the government for the rest of the fiscal year if they pass a short-term continuing resolution. Other than that, the biggest thing in 2025 is going to be laying the groundwork for extending the tax cuts that were enacted in 2017. That's going to be a lot of it. Coming out of the gate, I expect -- to Jim's earlier point -- that people going in -- the incoming administration has people ready to go from day one, and having some issues ready to go. Tax reform is going to be up there. There's some unfinished business from this Congress that could come up. I know they were close on getting an online safety kids bill [Kids Online Safety Act] done, but it's going to be about tax reform first and foremost, and then laying out the agenda for what they can get done. That's the biggest thing I see coming out in the first hundred days.

**LLB:** Jim?

**JVA:** Yes, I'll just add a couple things. One is that we talked about the Farm Bill, just because that has to get done *sometime*, whether it's the first hundred days, but you'll start to see some outline of it. The bigger thing is, again, the outline of it all. Two points on that. One is will the Senate give up on its role on really having any kind of confirmation process, even with Harry Reid getting rid of filibustering nominations and all? No comment on that, as a Democrat.

But the point there is if Thune [John Thune, R-SD] and the caucus decide not to really get into nominations, that's a big tell that will have a big impact over time in the first hundred days, number one. Number two, again, everything Mark just said, "Gee, we've got to do a budget. Guys, do we really want to do taxes first? Gosh, we wanted --" this, that, the other. It's what I was trying to refer to earlier, where what's going to emerge as the top issues? Is it going to be moving EPA and moving every other agency? I think not, just because that's really boring stuff. It'll get really tied down in the weeds.

Is Mr. Zeldin -- or if any of the people allegedly to be nominated actually get their positions -- you want to become the next thing? The next senator, or the next governor, the next whatever, because "I helped move the Department of Energy," or whatever. It just doesn't work that way in reality. Again, will it be EPA's budget that's slashed? Is it some other department's that's slashed, etc., because they're not probably going to do all of them in the first hundred days. But what agency, what issue becomes the ones that seem to dominate, to fulfill some of the campaign pledges and campaign issues. Again, that's why the tax bill, as Mark said, is certainly high up on that list. And what else is there going to be room for? Is it

going to be regulating vaccines, or lack thereof? Is it going to be food dyes? Is it going to be PFAS? Is it going to be student debt repayment? Is it going to be feeding program reform at the Ag Committee and things like that? That's what will emerge. It doesn't mean if your issue isn't in the first six months, you're home free. But that's really going to be a different story if you're part of the first bunch of things that set the tone and set the agenda versus sometime later.

**MW:** I'd like to add, too -- and I don't know how it totally just didn't come to mind -- tax reform and some of the other things we mentioned are all the legislative pushes. But on day one, President Trump is going to sign executive orders. President Biden did on climate change and EJ, signaling priorities. And just like President Biden undid a lot of things that President Trump did on immigration, I think that's going to be your biggest focus from the get-go before legislation even comes on immigration reform. You're going to see executive orders addressing that, because that was a campaign issue -- to Jim's point -- that can have immediate action. So think about the first day after inauguration, before the parties, the President's going to go to the White House. What are the executive orders he's going to sign? Immigration is going to have to be probably the top one maybe. Then, he will also address energy and permitting reform. That's more legislative. But I would say immigration -- keep your eye on -- definitely first week.

**JVA:** Sure. And there's going to be -- I think Biden was reported to have signed about 60 executive orders in his first days. So whether there's a race to put out more, or just similar things, again -- and my colleagues here have heard it before, but it's just like one of my favorite SpongeBob episodes: Opposite Day. Do the opposite of what was intended. That's Season 1, episode 9, for the listening audience. Please go look at it, along with the movie *Distinguished Gentlemen*.

**LLB:** Thank you, Jim.

**JVA:** But I'll stop recommending things to stream and turn it over to Lynn, I think, to close up.

**LLB:** That is right. Thank you, gentlemen, so much. For our listeners, if you like what you're hearing here, you can expect plenty more. We've started a Public Policy and Regulation Blog<sup>™</sup>, effective immediately, so we can share our insights on these and other topics on a real-time basis. Jim, Mark, thank you for your thoughts, preparing and engaging in this interesting conversation. And everybody just buckle up. It's going to be interesting.

**MW:** Well, thank you, Lynn.

**JVA:** Yes, thanks, Lynn. Stay tuned, sports fans.

**LLB:** Indeed. Thanks again to Jim and Mark for speaking with me today about election 2024 and the shape of things to come.

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