



## Episode Title: What to Expect from the 119th Congress -- A Conversation with 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®), a Washington, D.C., law firm focusing on chemical law, business, and litigation matters. I'm Lynn Bergeson.

This week, I discuss with my colleague Mark Washko, Senior Government Affairs Advisor for B&C and The Acta Group (Acta®), our consulting affiliate, the new 119th Congress and what might be key legislative actions our listeners should look for. The new Congress reflects many new members, new staffs, and a new Republican majority in both chambers. What can we expect? Will Congressional Review Act (CRA) measures undo key Biden initiatives? What might we expect in terms of a budget reconciliation package? These issues and a whole lot more are the subject of my conversation with Mark Washko.

Mark, it's a pleasure having you in the studio today. Welcome, and it's wonderful to talk about Capitol Hill developments.

**Mark Washko (MW):** Thank you. It's good to be here, Lynn.

**LLB:** With the inauguration of President Trump, we have what we keep hearing over and over again in Washington, a trifecta: control of the White House, Senate, House of Representatives. I know this might give rise to misrepresentations of fact, but what does this mean, and what can we expect to see with regard to a flurry of legislative enactments of all sorts for the next two years, or something less than that?

**MW:** It is true. The Republicans do control the White House, and the House, and the Senate. But it's not going to mean that there's going to be a free-for-all of "everything Republicans want, they're going to get" in a legislative sense, especially because while they do enjoy majorities, they are very slim majorities.

In the House of Representatives, Republicans won 220 to 215 seats, but that number has already shrunk, because two Representatives who were elected have already resigned, including Matt Gaetz and Mike Waltz, who are going to join the Trump Administration.

And it'll shrink by one more member when Elise Stefanik resigns to become -- assuming that she is confirmed -- to be the ambassador to the United Nations. That will leave Speaker Mike Johnson with a 217 to 215 majority, meaning he can only lose one Republican vote to pass legislation. That's assuming all the Democrats vote as well. A thin one-vote majority. And we've seen, even in recent votes of this Congress where the Republicans can't necessarily get 100 percent of the caucus to vote to approve something.

It's going to be challenging. It's going to be a test of how unified Republicans can be to try and get their agenda, because right now, with Democrats not controlling either part of Congress, there's not going to be a whole lot of desire to support a Republican or a Trump agenda through Congress. Now, that being said, there will be some interesting times when Democratic support will be needed. And we'll see how that plays out this Congress. So the short answer is --

**LLB:** No, not so much.

**MW:** Not so much. And stay tuned. It's going to be an interesting thing to watch.

**LLB:** It seems that the 119th Congress will be different in a variety of ways from the mere number of new Senators and new Representatives to new leadership in the House, Senate, and especially on the all-important committees that we track so carefully. Could you address how these changes might play out in real time, along with having a new President? Will it affect Congress's operational style? And what can people anticipate?

**MW:** I think it will. And something that our listeners should keep in keep in mind is, first of all, there are nine new Senators -- so nine out of 100 there -- and 63 new Representatives, almost evenly divided between Democrats and Republicans. So you've got many new members of Congress coming in who will have to learn how things are operating.

With Republicans taking over the Senate, Senator John Thune is the new Republican majority leader, having taken over from Senator Mitch McConnell, who was the Republican leader for many, many years. Senator Thune has been around for some time, but stepping into the role of leading not just the Republicans, but the entire Senate is going to take some getting used to. I think he'll be fine, but it's just stepping into a new role. Plus, with Republicans now taking charge of the Senate, every single committee has a new chairman, so they're going to be stepping into that role, staffing up their committees, and making sure that they are ready to go.

And then on the House side, there are many new members coming in to chair committees and new ranking Democrats on committees as well. As these people step into their roles, bring staff onto the committees, etc., it's going to take a little time to get used to how things are going to work.

Thank you for mentioning some of the committees, because some of the committees that we work with closely have new leadership. I'll start with my former committee, Energy and Commerce. There's a new chairman, Brett Guthrie from Kentucky is the new chairman. And the Environment Committee, which has jurisdiction over statutes like TSCA [the Toxic Substances Control Act], has a new subcommittee chair as well. That's Morgan Griffith of Virginia.

Also the Agriculture Committees, obviously with Republicans taking over the Senate, there's a new chairman, but there's also a new ranking Democrat on the Senate Agriculture

Committee, which is Amy Klobuchar, and on the House Ag Committee, Angie Craig. So Minnesotans have a good step up on ag policy issues with the leading Democrat being from Minnesota on both of the ag committees. With that, it's going to take a little time to get their feet under them, but once they start going, I think they'll be fine.

**LLB:** I hope that means we might actually have legislative activity. Kind of building on the last question, people have said, and I think rightly so, that the prior Congress, the 118th Congress, enacted fewer laws than any Congress in more than 70 years. I would imagine that if you take a historical kind of analysis, there's less legislation generally, not just this last session, but there's been a decline in the number of legislative actions initiated. What's your outlook for the 119th Congress, especially given the fact that we have the Republican trifecta, as it were?

**MW:** I can tell you, just based on the schedules that were set by the leaders in the House and the Senate, they have a very ambitious schedule and staying in session for far more days. I didn't count how many more days they're planning to be in, but I believe the Senate is scheduled to be in for 39 weeks and the House for 37. The Senate is not taking a break until mid-March. For several reasons. One, with a new administration, they have lots of nominations that are Senate confirmed. The President appoints; the Senate has to confirm senior people, so they want to do that.

Then there's other legislation that will have to get done. Right off the bat, Republican leaders know that they're going to spend more time in town and working on things. So I do expect it will be busier. Again, talking about the narrow majorities, how much gets done, we will see. But I do expect it to be more robust. Of the laws that were passed, once you start taking out things like naming post offices and VA [U.S. Department of Veterans Affairs] facilities, there wasn't a whole lot of robust --

**LLB:** -- consequential, important.

**MW:** No, not unimportant. I'm not downplaying that. And there was -- to be fair, there was a flurry of legislation enacted after the election as well, during the lame duck period. But still, you're right, there has been a declining number of laws passed in the past --

**LLB:** Looking at the narrower group of topics that *our* listeners focus on, what do you see as the priority issues on which you would expect the Republican Congress and the Trump Administration to focus on in 2025?

**MW:** Off the bat, we're just going to look at the Trump campaign priorities, and I'll lay those out and then talk about how some of the issues that our listeners will care most about will play in. But right off the bat, President Trump campaigned on immigration and border, taxes, regulatory relief, trade, and tariffs. There are also a couple of issues that carry over from the last Congress, including the Farm Bill and energy issues, including permitting reform. So one other thing that's going to play into how all this stuff works is the fact that the government funding that's currently in existence expires on March 14, so Congress will need to address that in the middle of the President's first 100 days.

In addition to those high-level issues -- and those are the first things that Congress is going to work on, plus the aforementioned nominations through the Senate -- but one thing that was not on the radar, I would say, at the end of last year, but has taken a little bit higher profile, we knew that the TSCA fees were going to expire in 2026, and we expect that action this Congress. But there were several questions in the Senate confirmation hearing for Lee

Zeldin, who has been nominated to be the EPA [the U.S. Environmental Protection Agency] Administrator. Also, as a bit of a surprise, the House Committee on Energy and Commerce is having a TSCA hearing the first week, the third week of January, on the 22nd. So they're already putting TSCA right at the front of something that they plan to deal with once they get past the top priorities that I've already mentioned.

**LLB:** It seems like a long list of priorities, Mark, with the narrow majorities that you alluded to a couple of questions ago. How will Republicans be able to act on all of these issues? Will they? Or -- there's always a lot of bravado at the beginning of an administration, particularly *this* Administration, for all the obvious reasons. Won't some of these initiatives require Democratic support?

**MW:** Some of them will. I'll just start by saying legislating is hard. Legislating takes time. For the most part, the way our system of government was designed, it was designed to have the House and Senate -- and parties weren't in existence when the government was created. But as it's evolved, for parties to work together to get something done. That being said, there is a legislative tool called budget reconciliation, which has been increasingly used by parties in power to pass legislation, because it requires only a simple majority, which is generally fine in the House, which runs by majority, but the Senate runs by either -- the Senate usually requires 60 votes to bypass a filibuster and get something done.

But the ability to use reconciliation means you don't have to. We don't -- we can spend an entire hour, Lynn, just talking about reconciliation and how it works. But the very short version is reconciliation can be used on matters of tax spending and debt limit. So what you've seen -- and some of the big policy changes that have come out of Washington in the past decade or more were all subject in part to -- were all passed by reconciliation. The 2017 Tax Cut and Jobs Act, which Republicans seek to renew, was done under reconciliation. It also has a ten-year budget window, so it's not durable policy, as we would think that it *could* be. It does have a timeline on it, but it can pass with simple majorities. Congress can pass something under reconciliation, but it has to have a budget impact. So taking some of the -- during the Biden Administration -- some of the climate provisions outside of the things that had budget impact, they didn't have some of the other policy changes that were needed. So there's a limit to what can be done. Republicans can pass some of these issues, especially on taxes, and some other things, and regulatory relief. But beyond that, things like the TSCA reform we're talking about are going to have to pass with bipartisan support because there are just not enough Republicans to get to 60 in the Senate.

**LLB:** Let's zero down on that TSCA front. You mentioned a minute ago that the House Energy and Commerce Committee had a hearing on January 22. I'm sure many of our listeners would be very interested in knowing what is the realistic prospect for any type of TSCA reform in this Congress.

**MW:** Sitting here at the very beginning of Congress, I'd say it's very realistic, and it's for this reason. With the TSCA fees expiring, people want to make sure -- and I would say on both sides of the aisle -- that the fees that were created in the [Frank R.] Lautenberg Chemical Safety [for the 21st Century] Act (Lautenberg) were to make sure that the TSCA program was funded so that when companies were putting chemicals through the process, there was sufficient staffing, sufficient resources for the agency to do its job.

Now, there have been talks about that, but part is to keep the funding coming in. And the other part of it is with the ability -- with the expiration of the fees -- there comes an opportunity to make some other changes to TSCA that might arguably improve the program.

I think it's one of those things where, in looking at legislation, there's a chance for people on both sides to benefit, and so when that happens, it increases the chances of something happening.

In addition, *unlike* when Lautenberg was enacted eight years ago -- eight and a half years ago -- that was a multi-year effort, where people had to generate interest in Congress, educate Congress, and give them a reason to want to act on it. This time, with the fees expiring, there is that forcing mechanism. Just having the fact that the fees have to be renewed, I would look at something like PRIA [the Pesticide Registration Improvement Act], which expires every few years and Congress has to reenact it -- reauthorize it. That's, I think, the forcing mechanism behind the fees. We get a fresh look at TSCA, and I think there's a good chance it gets done. It will -- there's a short timeframe, so a lot has to be done in a short time. But I'm optimistic that it will happen.

**LLB:** I take it from your remarks, Mark, that it may not just be the fees. It could be a broader legislative change to TSCA in areas *unrelated* to fees.

**MW:** Absolutely. The question is to me, not whether it's broader than the fees, but *how much* broader than fees it can go. And that's going to be the art of legislating, how many people you can get on board to support it without losing people on the other side.

**LLB:** Right.

**MW:** I can tell you from meetings that we did last year, there is bipartisan interest in improving the TSCA program, especially for new chemicals, which really are the lifeblood of innovation, promoting sustainability, and so forth. The interest has come from the House and Senate, Republicans and Democrats to see something due to improve that. So I, again, retain my optimism that something will happen. Again, it can be broader than new chemicals, too. There are other issues in TSCA that many people widely acknowledge need to be addressed. The question is how much weight can that camel carry?

**LLB:** All right then. We talked about the newbies in Congress, the new House members and new senators. When Lautenberg was enacted, almost nine years ago, it was a ten-year run-up to getting that legislation done. What I regret is the tremendous turnover in Congress writ large from 2016 to the present. There's considerable education and foundational information that needs to be shared with staff and members alike. TSCA, despite its familiarity to us and our listeners, tends to be a fairly niche statute that's complicated.

**MW:** Yes.

**LLB:** So with the turnover, how do you see -- and how might you advise clients in -- thinking through how best to prepare for some tweaking or modification of TSCA, particularly in the Section 5 new chemicals area, going forward?

**MW:** If you're asking how the client should prepare, I think one of the best things that people can do right now, for those of you with government affairs programs, is reach out to your people. Do not assume that your elected officials know what this is, know what it's about. Even on the Energy and Commerce Committee and the Senate Environment and Public Works Committee, there has been significant turnover. I will say that on the Senate, there's been less turnover, so they know what -- they talk about chemicals. They talked about it with the Zeldin hearing recently. But on Energy and Commerce, more than half of the

subcommittee that's dealing with this was not in Congress when the Lautenberg bill was passed.

**LLB:** More than half? Wow!

**MW:** More than half of the subcommittee. I'm sorry, just one less than half, so about half. But also, more than half of Congress was not in Congress when that bill passed. And just because they were here in Cong -- even if they *were* here, it does not mean they understood everything that it was all about. So my first piece of advice is talk to your elected officials if this is an important issue to you, whether it's new chemicals, existing chemicals, you have issues with TSCA, reach out to your elected official and say, "This is something important. We understand that there's going to be legislation. This is something you need to pay attention to." So first is -- if you're a company, an organization -- letting elected officials know it's an interest -- it's an issue of interest to you -- and then start explaining it. But it's going to take some time, because honestly, some of the members think TSCA's an Italian restaurant downtown, a fine restaurant, I will say.

But it is not -- but they have to understand how the statute works. Also, I will pass along advice from a former Representative, now Senator, which is, when you talk about chemicals, make it relatable to members who don't understand, who are not in, as Lynn would say, our niche-y little world. Make them understand how chemicals affect products and things that these members would know every day. So if they don't know chemicals, they do know automobiles, they do know paints, they do know coatings. They do know lots of things that chemicals go into -- phones, technology -- and say, "This is how this affects things." Then, when members have that aha! moment, they'll say, "Oh, I see." It could also be maybe matters of sustainability that the elected official has an interest in. How does a new product affect that? So something that gets their attention to say this is something they should act on or something they should be taking care of right now.

**LLB:** Great advice, Mark.

**MW:** Sure.

**LLB:** Let's pivot to the Congressional Review Act. At the beginning of this Administration, there has just been so much discussion about the so-called CRA.

**MW:** Yes.

**LLB:** CRA saves all. And perhaps it's relevant in the context of TSCA initiatives: final rules, lots have been coming out. December was just a flurry of activity with regard to TSCA initiatives. I wanted you to talk a little bit about the CRA, how it's used, and how do you expect, in reality now, to see the CRA used, if at all?

**MW:** In reality -- just taking a step back, the CRA is used to -- it's a blunt instrument that is used to undo regulations. Once a regulation is undone, Congress cannot come back and revisit that or a regulation cannot be passed that's similarly the same, unless there's congressional action to say that. That being said, when there's a new administration and Congress is controlled by the same party, there is an interest in undoing some regulations that were enacted under the previous administration. The Biden Administration and Democrats used the CRA to repeal several rules in the Trump Administration. The Trump 45 presidency used the CRA to repeal some rules from the previous Administration, and so forth.

But despite all that interest, the CRA, because it's a legislative vehicle, still requires political capital to be used, and members have to understand what they want to repeal and what the benefit is to them. I know a couple of weeks ago, Senate Republicans said they had identified 60 potential rules to be repealed by the CRA. But the reality of it is eight years ago when President Trump was first elected, a similar number of regulations was identified, but I think there were only 16, 17 rules that were repealed. So even though there are a lot of things identified that people would like to see gone, or constituents have brought to the attention of their elected officials, the reality of it is it's a short timeframe. With all the other competing priorities that will have to resonate with people, if Congress says, "Hey, we repealed something!" and people yawn, or don't know, or don't care -- if there's not a lot of benefit -- we're still dealing with political animals at the end of the day. So if it's something that people can say, "Yes, this makes sense. This regulation, I can make a case for it," then it will go forward. So while there's a lot of interest and a lot of talk, that remains to be seen. I am not going to try and predict numbers, but maybe a dozen-ish. If that gives me enough leeway on either side.

**LLB:** That ish kind of --

**MW:** The ish. The ish is always very important. But yes, I would say look for somewhere in there. There's just a lot going on, as I mentioned earlier, between the priorities, the nominations, other things, so CRA has to fit within all that in a short timeframe.

**LLB:** Yes. My guess is it'll be more. I just think the Trump Administration feels particularly emboldened. And since we had a fair number eight years ago, I would expect there could easily be more.

**MW:** But --

**LLB:** We'll see.

**MW:** True. And you did mention in the area in which we're operating, there are a number of TSCA-related rules, but I don't know -- it's going to be a bit of an uphill climb to convince members that those are going to have to be targeted as opposed to -- we know there are -- the new president -- whether DEI [diversity, equity, and inclusion] things or other things are going to be targeted by CRA, maybe some financial services things. When you get into narrow TSCA issues that might be a little bit more challenging to do. But stay tuned. We will have updates.

**LLB:** Right. Exactly. Let's talk a little bit about a term we hear a lot, a new term unique to this Administration: DOGE [Department of Government Efficiency], under the leadership of Elon Musk and Vivek Ramaswamy. Now, that's been diminished by 50 percent, since Vivek is resigning from the DOGE leadership committee to run for a Senate seat in Ohio, his home state. We hear a lot about it. It still seems to be very soft to me, particularly now, since Elon is all by himself. What do you think is a realistic expectation for diminishing, if not cutting bluntly, government spending?

**MW:** I think it's going to be challenging, because initially, I would say that the original target of \$2 trillion to cut has already been walked back to maybe \$1 trillion.

**LLB:** -- which is still a lot of money!

**MW:** It is not an insignificant amount of money, intentional use of a double negative. But the reality of it is this -- on the first day after inauguration, President Trump signed an Executive Order creating the U.S. DOGE Service under the U.S. Digital Service to last until July 2026. And just so people know who haven't read the Executive Order -- we read it so you don't have to. Each agency in the government will have a DOGE team of at least four employees, typically including a team lead, an engineer, H.R. specialist, and an attorney. They are to come up with cost-saving measures from the different departments.

That's going to be interesting to see how this works, because at the end of the day, spending money, the power of the purse resides within Congress. So while DOGE can identify potential for cost savings, it's going to be incumbent upon Congress to act. Every new Congress is different, but I will say, looking back to 2011, when there was a wave of Tea Party members coming in and wanted to cut the size of government, the size of government has grown. It grew under their watch. It's grown significantly. It grew during COVID.

While it is true that revenues have grown, they have not kept pace with the spending of the government. So that's something as well, for DOGE, to -- that has to look at how to do that. But I think that might be a little bit outside the purview of DOGE. One thing I will pick up on is the E, and that's efficiency. One thing that was also included in the Executive Order is a software modernization initiative to improve software network infrastructure and IT [information technology] systems across the federal government. One thing we have heard from EPA is that, for example, their systems are outdated.

**LLB:** Totally, right.

**MW:** And it is difficult for them to do their job, just one agency, and I'm sure this is replicated across the government. But to expect government agencies to act with outdated software, outdated hardware, outdated systems when the private sector is years ahead of them, the systems aren't compatible and it leads to delays and inefficiencies. So on the E part, if it can improve the efficiency of how government agencies work, I think that would be a welcome thing. But again, the U.S. government is a big animal. It is bigger than any company ever, and there's just going to be a lot of work in there, so we'll see. They have a lot of work to do in a year and a half, but we'll see how that's going to work.

**LLB:** Mark, how do you think fairly recent Supreme Court rulings -- last summer's demise of Chevron deference in the *Loper Bright* decision -- will affect how Congress legislates moving forward?

**MW:** I think what the Supreme Court said was, they told Congress not to defer so much to the agencies. And so Congress has to be a little bit more explicit in providing definitions and guidance, going back to my earlier comment that legislating is hard. Over time, just as a general comment, I think Congress has yielded some of their constitutional power to the executive branch, regrettably, in some instances, but that's another podcast.

But right now, when -- let's just look at potential TSCA legislation -- Lautenberg didn't have definitions for some terms, which people have been struggling with. Just using that for an example, clearly defining terms. Now that needs to be negotiated and figured out before that goes, but I think Congress is going to have to sit down and say whether it's EPA or department of anything else -- Department of Energy, for example -- has to be very, very clear in what they're expecting and what they want the agencies to do.



That will take time. It'll be complicated. But I think the Supreme Court direction was pretty clear, and I think it can also be viewed as the Supreme Court rebalancing a little bit the power between the branches, saying "Congress, don't give that much power over to the agencies. You've got to do your job and tell agencies what you mean." We'll see how it goes. It's not going to be easy.

**LLB:** No, still, it --

**MW:** It was a lot easier to say the agency will define it.

**LLB:** Well, not to push back, but I think EPA's decision *not* to define a lot of terms, both in the law as it was a participant in the negotiations through Jim Jones, as you know, and in the implementing regulations, under the theory that the types of terms that are so relevant to TSCA in particular -- what is "foreseeable," what is an "unreasonable risk" -- are terms that evolve, so baking them into a *legislative* framework might be even more ill-advised than baking them into a *regulatory* framework. There are a million different views on this subject, and it will be fascinating to see how it plays out.

**MW:** Agreed 100 percent. Our government continues to evolve, and it's always -- it's like a pendulum going back and forth. It's ever-moving and self-correcting, so we'll see how it plays out. But it will be interesting to watch. I agree.

**LLB:** That's an excellent kind of predicate to my final question, which is, given some fundamental rethinking on how legislation should be implemented, and passed, and written, what does that mean for our clients and for the people listening to this podcast? How *do* you engage with Congress? And what should organizations and our clients and others do, and when? Starting, I think, pretty much today, right?

**MW:** Absolutely. My advice is engage with your elected officials early and often. Similar to real estate, the best time to engage is yesterday; the second best time is today. Again, think of it, too, as you're engaging with your elected officials to let them know who you are, what you make, what your concerns are, not just when you have problems, but I think it's also important to talk to your elected officials to celebrate some of your victories. Let's say, for example, you've been incident-free in the workplace for years. Members of Congress want to celebrate what happens in their district or their state as well. So use them, but also use that as a way to get to know them so that when you go with a problem, you have an established relationship.

I'll pass along advice that my first boss off the Hill gave to me, which was, "Never make your first meeting an ask." However, this is a town built on relationships, and if you are known as someone who goes only when there's a problem because you need something, the question is, what are you giving back in return? Not that it's a *quid pro quo* thing, but is there a relationship, or are you just coming because you want something from me? For anyone -- think of it as friends or people you meet in your regular life. There's someone who comes to you only when they want something. After they do that three or four times, your mind starts thinking --

**LLB:** -- you've worn your welcome out.

**MW:** "What's going on?" But maybe they'll say, "Hey, let's get together and have lunch" or "Let's have a" -- then you're on a different kind of basis. "Let me know what's going on. Tell me about your life. How's your dog?" But relating something about that, I think, is also

positive. But engage, engage early, say some of your positives, say some of the things that you're doing, maybe how you're doing them. Also let people know that you care, but pay attention.

Pay attention. There's an awful lot going on. There is a lot of news. And one thing that people -- by now, if they had forgotten -- is clear, is that in a Trump Administration, there is a lot of stuff flying at you all over the place. And there's no way that the news can keep track of everything. But if there's something that's important to you, and it may not be there -- and we'll be frank, as we talked earlier today, Lynn. Chemical issues and TSCA may not be -- they're not as --

**LLB:** -- they're not top of mind.

**MW:** They're not -- it's not made for TV. This is an immigration issue. This is a border issue. This is a taxes issue. But it's still important to our economy. It's important to our listeners. It's important to our companies. So you have to keep those things front of mind to your elected officials as well, and other stakeholders in the political process, to say, "These things are important, too," and just keep engaging.

**LLB:** Sounds good, Mark. As our listeners know well, 2025 will be an interesting, consequential, and probably fairly chaotic year. But I want to thank you, Mark, for joining the podcast this morning and sharing your incredible wealth of knowledge with regard to legislative matters. Thank you.

**MW:** Thank you, Lynn. I appreciate it. Look forward to coming back as we get through this Congress and Administration.

**LLB:** You bet.

My thanks again to Mark for speaking with me today about the 119th Congress and what we can expect in the near term.

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