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## Shaking Things Up – The Trump Administration, Regulatory Change, and Administrative Law: Allan Gates (Mitchell Williams) National Association of Clean Water Agencies Webinar Presentation

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My law firm colleague Allan Gates undertook a webinar presentation for the National Association of Clean Water Agencies (“NACWA”) titled:

*Shaking Things Up – The Trump Administration, Regulatory Change, and Administrative Law (“Presentation”)*

NACWA describes itself as an association representing public wastewater and stormwater agencies of all sizes nationwide.

Allan’s Presentation provided an overview and/or insight of topics such as:

- Administrative Procedure Act
- Trump Administration Efforts to Reverse Obama Initiatives (including a description of countervailing forces)
- Potential Role of the new United States Supreme Court Justice Gorsuch

The Presentation included an overview of the “basics” of the Administrative Procedure Act (“APA”).

APA statutory definitions were identified such as:

- Rulemaking – agency process for formulating, amending or repealing a rule
- Adjudication – agency process for formulating an order
- Rule – an agency of general application and prospective effect
- Order – a final disposition of an agency in a matter other than a rulemaking, but including “licensing”

The APA discussion included descriptions of:

- Rulemaking
- Adjudication
- Judicial Review

The elements of these APA components were also addressed. For example, in addressing “judicial review” the Presentation discussed concepts such as:

- Justiciable Controversy?
- Committed to Agency Discretion?
- Finality/Exhaustion of Administrative Remedies?
- Content of Administrative Record?
- APA Standard Review
- Deference to Agency Interpretation of Law

The Presentation then addressed Trump Administration activities to attempt to reverse certain Obama initiatives. These activities have involved:

- Congressional Review Act
- Executive Orders directing Stay or Rescission of Rules
- Executive Order Two for One Requirement
- Changes in Agency Budgets, Priorities & Personnel
- Changes in Agency Policy & Legal Positions

Allan described some of the “countervailing forces” that have or may have impeded to some extent the Trump Administration efforts. These are identified as:

- Repeal of a Rule Requires a Rulemaking
- Independence of the Judiciary
- Changes in Legal Position Can Generate Skepticism
- Newton’s Third Law of Motion
- Resistance from Outside the Agency
- Resistance from Within the Agency

Finally, the Presentation discussed the potential role of the newest United States Supreme Court Justice, Gorsuch.

Justice Gorsuch is described as a “Scalia-style textualist and originalist.” In illustrating this description the Presentation notes:

- Example of a Gorsuch dissent
- Justice Gorsuch relationship with Justice Kennedy

The Presentation also asks whether there is a “Thomas – Alito – Gorsuch Voting Bloc Emerging.” This possibility is illustrated by noting:

- The Supreme Court of the United States Agreement with Gorsuch Votes as 10th Circuit Judge
- The Supreme Court of the United States voting patterns

The possibility of Justice Gorsuch shifting the balance on Chevron deference is also noted.

The Presentation also notes Justice Gorsuch’s forcefulness on the bench and conservative view of the role of federal courts and separation of powers (citing various cases).

The Justice’s conservative position on social issues is also described.

[A copy of Allan Gates’ slides from the webinar can be downloaded here.](#)