

## **WE FACE AN UNPRECEDENTED JOURNEY INTO UNCHARTED WATERS – YES, THESE ARE OVERUSED DESCRIPTIONS, BUT THEY ARE APT**

During my latest sets of conversations last week in London and this week on the continent (all Europe to me, but I defer to the British sensitivity), virtually everyone wanted to talk about US politics, not because of generalized interest in dominant issues of the day, but due to incredulity and fear, and each who did engage on the subject wanted assurances that Donald Trump would not be elected for a second term. Some tied their concern to Russia-Ukraine, but essentially all found the prospect of a Trump victory to be a terrifying thought – for America, for their country, for the world.

I found myself repeating the explanation – really more of a warning, “admittedly the terms ‘unprecedented’ and ‘uncharted waters’ are overused, but I have no other words to describe the state of our politics and the palpable threats that extremists, and those who fear standing up to them, pose to our democracy.” I explained that seven years ago, and perhaps even four years ago, one would have been hard pressed to find references to “threats to US democracy.” Now those warnings are ubiquitous. In short, it is by no means hyperbole to frame our political polarization and paralysis as unprecedented, our direction as a country as headed for uncharted, and dangerous, waters, and our democracy as hanging in the balance.

Let’s take a quick inventory:

### **Senate Hold-Ups**

In the Senate, Tommy Tuberville – a single senator – has been holding up over 300 military promotions, endangering our national security and demoralizing so many who willingly have taken up the defense of the United States. He is doing so in his quixotic quest to counter what he sees are “woke policies” in the heart of the US military – reimbursement of expenses for military service members needing to travel to obtain abortions or other forms of reproductive health care. Among the many nominations on hold, the US military has had to operate without a commandant of the Marine Corps or heads of the Army and Navy for the first time in history. The number of nominations on hold could rise to 650 by year end, if Tuberville does not relent.

Tuberville can hold the nominations hostage as customarily uncontroversial matters are typically handled by a process of “unanimous consent.” Unanimous means unanimous. There is an end-run against the hold on nominations but it means taking each nomination to the floor – that maneuver though takes hours per individual and though used this past week for the Chairman of the Joint Chiefs of Staff as well as the heads of the Army and Marines, bringing the current 300 nominations to the floor would in effect paralyze the Senate as it would eat up valuable legislative time. That simply is not possible.

Incidentally, at a time when our foreign policy and national security depend on the support of allies as well as sustained outreach to the less aligned, the Republican obstruction in the Senate in confirming our ambassadors, including career foreign service

officers, remains a travesty. (See Liz Schroyer’s [op-ed](#) in the Hill (“America’s diplomats are missing in action – it’s endangering national security”).)

### **Clown Car Antics in the House**

In the House, because of an ultra-thin GOP majority of four and concessions made to wield the gavel, Speaker Kevin McCarthy is hostage to a small fringe of around 20 MAGA extremists (there is some fluidity depending on the issue) who have no desire to engage in policy debates or otherwise govern. If Speaker McCarthy fails to do their bidding (by managing, for example, to thwart their obstruction by joining with Democrats as happened in June when the debt ceiling was lifted and as happened last night), they (in fact any one) may move to vacate – triggering a [process](#) intended to remove him as Speaker. As Carl Hulse, [writing](#) in the New York Times (“The Wrecking-Ball Caucus: How the Far Right Brought Washington to Its Knees”), so eloquently put it, this “ultraconservative minority ... sees the federal government as a threat to the republic, a dangerous monolith to be broken apart with little regards for the consequences. They have styled themselves as a wrecking crew aimed at the nation’s institutions on a variety of fronts.” Speaker McCarthy was blunt in his assessment, “This is a whole new concept of individuals that just want to burn the whole place down.”

### ***Government shutdown narrowly averted with three hours to spare***

We narrowly missed a federal government shutdown last night that only hours before the midnight deadline appeared all but certain because of that small extremist fringe.<sup>1</sup> In what has been described variously as a “stunning turn of events,” a “strategic reversal,” a “shock,” Congress on a bipartisan basis averted that shutdown with Speaker McCarthy pushing through a [stopgap funding bill](#) (in the form of a “clean” continuing resolution, or CR) that funds the federal government at current levels for 45 days (with reauthorization of the FAA through year-end), and adds \$16 billion for emergency disaster relief. A shutdown would have cost the American economy billions of dollars and imposed significant hardship on millions.

The stopgap funding bill passed the House 335-91, with 209 Democratic votes and 126 Republican votes, and passed the Senate 88-9 (all nine “nays” being Republican, with

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<sup>1</sup> A shutdown means that the federal government broadly cannot spend money. The technical reason is that the federal government is funded by 12 annual appropriations bills. In the past few years, these 12 bills, or a portion of them, have been bundled into a single “omnibus” packaged and voted upon. A partial shutdown occurs if only a portion of the 12 bills are passed. There is no risk of a government default, however, because payments on Treasury bonds are not covered by any of the 12 bills. The government’s fiscal year ends September 30 and the disagreements over the budget relate to funding FY 2024, which begins October 1. Those disagreements essentially involve the fringe group’s demands to reduce that budget to around \$1.4 trillion, which is lower than the \$1.6 trillion agreed between President Biden and Speaker McCarthy at the time the debt ceiling was raised. To be clear, the deal that was reached in June was held hostage by the extreme right.

some of the nine attributing their objections to lack of money for border security). The bill needed two-thirds support in the House for procedural reasons (to suspend a 72-hour rule).

The 11<sup>th</sup> hour maneuver represents a blow to the Freedom Caucus and their agenda of significant spending cuts, funding of more border security and cutting off support for Ukraine, and underscores how key Democratic support has become for any essential legislation McCarthy needs to pass. Democrats remain unified, and benefitted from President Biden's refusal to facilitate McCarthy's end run around House Democrats.

The stopgap bill includes domestic disaster relief but, in a move that could have serious consequences for the war in Ukraine (insofar as it emboldens Vladimir Putin), no aid for Ukraine. The bill initially included funding for Ukraine, but was dropped due to objections from conservative lawmakers. The Senate package called for \$6 billion of additional aid, but McCarthy's omission of any aid in the House bill doomed the support, for the time being. The lone Democrat voting against the bill in the House was Rep. Mike Quigley, co-chair of the Congressional Ukraine Caucus, and Sen. Michael Bennet drove an hours' long delay in an effort to get senior leadership commitment on aid for Ukraine.<sup>2</sup>

A bipartisan statement was issued by senior leadership in the Senate (Schumer, McConnell, Murray, Collins, Coons and Graham) committing to a vote "in the coming weeks" on further funding for Ukraine (the price reportedly for Bennet to drop his opposition). House Democratic leaders (Leader Hakeem Jeffries, Whip Katherine Clark, Caucus Chair Pete Aguilar and Vice Chair Ted Lieu) issued a statement calling for an up-or-down vote on Ukraine aid "when the House returns." This may become the price for Democratic support for McCarthy to retain the speakership were the Freedom Caucus to make good on their threats.

Speaker McCarthy was hailed by some for his abrupt shift away from seeking a bill that would garner no Democratic support, but as President Biden [noted](#) after passage of the stopgap bill, and referring to the budget deal reached in June "to avoid precisely this kind of manufactured crisis," "we should never have been in this position in the first place." McCarthy may now face a move from his extremist right wing flank to oust him as speaker.

The power of the extremists was evident on Friday when the House failed to pass Speaker McCarthy's earlier stopgap funding bill (the fringe 21<sup>3</sup> voted against CR in a

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<sup>2</sup> In a post on X, Liz Cheney had this to say about her erstwhile colleagues: "Members of the House and Senate who are voting to deny Ukraine assistance on the 85th anniversary of Neville Chamberlain's 1938 "peace in our time" speech should read some history: Appeasement didn't work then. It won't work now."

<sup>3</sup> That the fringe now numbers 21 belies the idea that the extremists are shrinking in number, as there were 20 that opposed the McCarthy speakership last January. Note though that the fringe is not operating in a vacuum – see [Accountable.US Memo](#), which highlights that right-

stunning repudiation of McCarthy, joined by all 211 House Democrats). The CR would have postponed the day of reckoning by 30 days, but was opposed by all Democrats as it would have cut spending for most domestic programs by close to 30%, it failed to provide for any humanitarian or military aid for Ukraine and it would have directed the DHS Secretary to resume building Trump's wall.

For the record, there have been 21 government shutdowns (typically triggered by a single issue) since 1976, including:

- the 21-day partial government closure in 1995 when President Clinton squared off against Newt Gingrich;
- the 16-day partial government shutdown in 2013, when the GOP tried to use budget negotiations to defund the Affordable Care Act; and
- the 34-day shutdown starting in December 2018, triggered when Trump refused to sign any appropriations bill that did not include \$5.7 billion of funding for his border wall.

This time, there was no single policy issue or group of issues prompting the threat of a shutdown – this was simply the nihilists wreaking havoc, because they could. It was internecine warfare among Republicans. It remains unclear what the process will look like over the next 45 days. After all, based on the June deal, funding the government should have been a non-event.

### *Evidence-free impeachment*

In the meantime, the extremist fringe is fixated, as part of its newfound brand of fact-free performative politics, on impeaching the President. As summarized this past week by Philip Bump, [writing](#) in the Washington Post (“The Republican case against Biden takes a body blow ... from Fox News”), there are two prongs to the impeachment effort, neither of them valid.

- The first is that the President benefitted financially from his son's business efforts. Despite months of investigation, House Republicans (including the Oversight Committee headed by Rep. James Comer) have yet to find any evidence supporting the claim.
- The second is that then Vice President Biden pushed for the removal of Ukraine's then prosecutor general to benefit Burisma, on whose board Hunter was a director, and Hunter personally. Again, not only is there no evidence, but the former president of Ukraine interviewed on Fox News confirmed that the prosecutor general did not get fired because of Biden.

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wing groups such as the Heritage Foundation, Center for Renewing America, Club for Growth and Empower Oversight are providing the ideas and the funding, with the expectation that political intransigence can be leveraged to enact a far-right spending agenda.

If you missed the first day of hearings led by Comer, you are not alone. There is better fantasy entertainment on offer. As Heather Cox Richardson [summarized](#) Friday night, now paraphrasing Rep. Jamie Raskin, the promise of where-there-is-smoke-there-is-fire, produced neither fire, nor smoke. Richardson describes how Comer lost control of the hearing when committee Democrats fired back, with Democrats calling out examples of where witnesses or committee members had deleted words in quotations to alter meanings, four Republican witnesses had said they had not presented first-hand witness accounts of crimes while the committee blocked testimony of those who could testify to actual facts. Richardson quotes Charlie Sykes of The Bulwark who [summarized](#) the proceedings as such: “The charitable view is that the first hearing was a dumpster fire inside a clown car wrapped in a fiasco.”

That this latest exercise in performative politics was intended only to discredit President Biden as a way of changing the subject away from Trump, was eminently clear throughout. When the GOP, accustomed to saying whatever they want on social media, were confronted by facts, based in reality, they resorted to their customary sidestep: they fled again to social media, boasting of all the evidence they had accumulated.

### ***Upending traditional GOP orthodoxy***

The extremist fringe hail from the party that traditionally has supported the military and a strong defense, and yet they blocked their colleagues from debating a military spending bill. They refused to meet with Ukrainian President Zelensky when he visited DC. They also hail from the party that traditionally has styled itself as the party of law and order, and yet have set their sights on the FBI and the Department of Justice.

### **Donald J. Trump, Defendant**

A twice-impeached former president is facing four indictments (and a total of 91 criminal counts) as well as two civil suits:

- The NY Attorney General’s civil suit against Trump and related defendants for fraud for illegally inflating his assets and net worth in financial statements presented to lenders and insurers (under a provision of New York law ([Executive Law § 63\(12\)](#)) granting the NYAG broad powers to pursue in special proceedings fraud claims against corporations and individuals).

This past week, in his [decision and order on motions](#), Judge Arthur Engoron declined the defendants’ motion to dismiss the case, and partially granted the NYAG’s motion for summary judgment, finding Trump, his two adult sons and others guilty of fraud. The court granted two prongs of the relief sought, namely cancellation of business certificates for named Trump business entities (a somewhat unprecedented sanction), in theory triggering dissolution of the relevant limited liability companies, and the appointment of a monitor for the Trump organization. Legal experts are divided on the implications of the cancellation order. A trial will proceed next week on the narrow remaining issues (including

financial penalties), though it will be a bench trial (meaning no jury). Sanctions were also assessed against lawyers acting for Trump.

Two days later, the NY court of appeals rejected Trump's lawsuit against Judge Engoron and declined to delay the trial.

- The four felony-count January 6<sup>th</sup> and 2020 election aftermath case brought by Special Counsel Jack Smith and the Justice Department. The trial date currently is March 4, 2024.
- The 40-count (37 original counts plus three reflected in a superseding indictment) Mar-a-Lago documents case brought by Special Counsel Jack Smith and the Justice Department. The trial date currently is May 20, 2024.
- The 13-count Georgia state election tampering case brought by Fulton County District Attorney Fani Willis against Trump and 18 other defendants. In a clumsily transparent effort to hamper the case, Rep. Jim Jordan demanded that Willis turn over documents relating to her case, prompting a [scathing response](#) from Willis that called the request "offensive to any notion of separation of powers that recognizes the distinct roles of the executive and legislative functions of government" and "at flagrantly at odds with the Constitution." Willis did not stop there, characterizing Jordan's attempted interference with an active criminal case in Georgia as demonstrating "total ignorance of Georgia's racketeering statute and the basics of criminal conspiracy law" and calling out his failure to understand that underpinning the case were the recommendations/findings of two separate grand juries.
- The Stormy Daniels hush money payments case (34 counts of falsifying business records) brought by Manhattan District Attorney Alvin Bragg. The trial date currently is March 25, 2024.
- The second defamation case brought by E. Jean Carroll. The trial date is January 14, 2024. In May, a jury ruled that Trump was liable for sexual assault and defamation, awarding Carroll \$5 million in damages. The second case will allow Carroll to amend her original lawsuit to cover statements made by Trump after the first jury award at a CNN town hall.

Trump is potentially courting contempt sanctions because of the public threats he has been making against prosecutors and witnesses and intimidation of potential jurors.<sup>4</sup>

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<sup>4</sup> On September 15, Special Counsel Jack Smith [requested](#) that the judge in the January 6<sup>th</sup> case (Judge Tanya S. Chutkan) issue a "narrowly tailored order" (what the media has been referring to as a "gag order") to restrict Trump from engaging in "certain prejudicial extrajudicial statements." Citing the Trump statement that "if you go after me, I am coming after you," the request notes that Trump has made clear his intent to issue public attacks related to this case... . And he has made good on his threat. Since the indictment in this case, the defendant has spread disparaging and inflammatory public posts on Truth Social on a near-daily basis regarding the citizens of the District of Columbia, the Court, prosecutors, and



Republicans are characterizing the Trump indictments as evidence of a two-tier system of justice – and they are right, but for the wrong reason: any other defendant would likely be behind bars for the threats and intimidation.

### **The Road to Fascism**

Trump has made no secret of what he intends to do if returned to the White House – it is nothing short of roadmap to fascism. (See my [July 23, 2023](#) briefing note.)

### **Impairing the Fight Against Disinformation**

Rep. Jim Jordan and other Republicans are leading a campaign to put researchers monitoring and analyzing disinformation out of business. This is causing academics, government and civil society researchers to scale back their research efforts at a time when disinformation poses an existential threat to elections and democracy. The basis for the attacks is that researchers allegedly are colluding with key social media platforms in what is tantamount to “censorship of conservative free speech.”

I highlighted in a previous briefing note efforts by two state attorneys general to enjoin government involvement with social media content moderation efforts (see my [July 7, 2023](#) briefing note). An injunction was issued, but it has been stayed. In the meantime, as summarized in a recent Washington Post [article](#) (“Misinformation research is buckling under GOP legal attacks”), academics, the scientific community, funders and others involved in tracking and analyzing disinformation (whether related to elections, public health or otherwise) are pulling back, and are doing so at a time when social media platforms are cutting back on content moderation. Add the pernicious effects of generative AI, and we have the perfect election-interference storm headed our way.

### **Where is the Pushback?**

Yes, some mainstream Republican leaders are alarmed (though, for some, likely alarmed by the prospect of election losses in 2024, particularly in the House, prompting rare public criticism of the fringe), but they generally are not speaking out. When they do speak out, they only compound the dysfunction. Recall in February 2022, the RNC characterized the January 6<sup>th</sup> insurrection as “legitimate political discourse.” Few Republicans have spoken out on the Trump indictments. In the past few days, more worryingly, few have spoken out in response to a suggestion by Trump that outgoing Chairman of the Joint Chiefs General Mark Milley should be executed.<sup>5</sup>

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prospective witnesses. Like his previous public disinformation campaign regarding the 2020 presidential election, the defendant's recent extrajudicial statements are intended to undermine public confidence in an institution the judicial system and to undermine confidence in and intimidate individuals the Court, the jury pool, witnesses, and prosecutors.”

The hearing on the requested order has been set for October 16.

<sup>5</sup> Referring to various accounts of a telephone call made by General Milley to his Chinese counterpart, after receiving intelligence that the Chinese feared Trump would launch an

I would like to think that we can draw comfort from last night's House GOP repudiation of the MAGA wing. That remains to be seen, but it bears remembering that the high drama over government funding was completely unnecessary and no way to govern responsibly. It was a waste of legislative time and a waste of time and other resources for the agencies across the government that had no choice but to trigger contingency plans for the shutdown. And on the other end of all of this were the hundreds of thousands of federal workers consigned as pawns in Republican performative politics.

### **Concluding Thoughts**

The combination of the headlong rush to impeach President Biden and to shut down the government over no particular policy disagreement highlights the danger we face, namely the willingness by one political party to weaponize mechanisms the bar for the triggering of which should have been extremely high. The failure of the Republican Party leadership to repudiate Trump, perhaps out of fear not only for their political futures but also for their and their families' personal safety, is yet another contributor to the dangers we face.

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attack, to allay those fears, and a second call made two days after the January 6<sup>th</sup> insurrection (see the [profile](#) of General Milley published last week in *The Atlantic* ("The Patriot: How General Mark Milley protected the Constitution from Donald Trump")), Trump announced on his platform, "This guy turned out to be a Woke train wreck who, if the Fake News reporting is correct, was actually dealing with China to give them a heads up on the thinking of the President of the United States. This is an act so egregious that, in times gone by, the punishment would have been DEATH!"

This should come as no surprise from a former President who referred to his Secretary of Defense Jim Mattis as the "world's most overrated general," who reportedly referred to US Marines buried at Aisne-Marne American cemetery as "losers" and "suckers" and reportedly referred to the 1,800 US Marines who died in the Battle of Belleau Wood as "suckers" for getting killed. And certainly, no surprise from a candidate for President who called John McCain a "loser" – and referring to his prisoner-of-war status who said McCain is a war hero because he was captured. "I like people that were not captured." Or the same person who reportedly wanted wounded veterans banned from military parades.

Another voice from the MAGA fringe (Rep. Paul Gosar) accused Milley of "coordinating with Nancy Pelosi to hurt President Trump and treasonously working behind Trump's back," leading him to conclude that "in a better society, quislings like the strange sodomy-promoting General Milley would be hung."

As noted above, unprecedented, yet here we are. And where are the Republican leaders? General Milley appears to have filled the void in an apparent swipe at Trump when he said in his farewell speech, "We don't take an oath to a king or a queen or to a tyrant or a dictator. And we don't take an oath to a wannabe dictator. We don't take an oath to an individual. We take an oath to the Constitution, and we take an oath to the idea that is America, and we're willing to die to protect it."



President Biden, in his [speech](#) this past week honoring John McCain, did not mince words, “there is something dangerous happening in America now. There is an extremist movement that does not share the basic beliefs in our democracy: the MAGA Movement. [T]here is no question that today’s Republican Party is driven and intimidated by MAGA Republican extremists. Their extreme agenda, if carried out, would fundamentally alter the institutions of American democracy as we know it. ... The MAGA extremists across the country have made it clear where they stand. So, the challenge for the rest of America – for the majority of Americans is to make clear where we stand.”

He catalogued the now all too familiar parade of horrors: attacks on the free press as the enemy of the people, attacks on the rule of law as an impediment, voter suppression and election subversion, the banning of books and burying history, accusations that the military is “woke” and “weak,” the Trump 2025 road-to-fascism agenda, the whitewashing of the January 6<sup>th</sup> insurrection, the hold on military nominations, and the attack on General Milley.

The President then shifted to a clarion call, first noting that for him, as for most of us, democracy as an academic subject was a quaint notion, never questioned, never tested. But there he is as president of the United States “making this speech about my fear of the diminishment of democracy.” He asked:

- Do we still believe in the Constitution?
- Do we believe in the basic decency and respect?
- Do we believe that the defining feature of our democracy is our Constitution?
- Do we believe in the separation of powers and checks and balances, that debate and disagreement do not lead to disunion?
- Do we believe in free and fair elections and the peaceful transfer of power?
- Do we reject political violence and hate?
- Do we see fellow citizens as such, or as mortal enemies?
- Do we put country and the preservation of democracy first?

He concluded: “Democracies don’t have to die at the end of a rifle. They can die when people are silent, when they fail to stand up or condemn the threats to democracy, when people are willing to give away that which is most precious to them because they feel frustrated, disillusioned, tired, alienated. ... So, the answer to the threats we face is engagement. It’s not to sit in the sidelines; it’s to build coalitions and community, to remind ourselves there is a clear majority of us who believe in our democracy and are ready to protect it.”

And, we must all vote.

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