

Thoughts on Coming Apart and the Coming Great Reset



**Turning and turning in the widening gyre
The falcon cannot hear the falconer**

Kit Webster

July 5, 2024

Let's Talk About Market Tops

As a nation of freemen, we must live through all time, or die by suicide. - Abraham Lincoln

All governments suffer a recurring problem: Power attracts pathological personalities. It is not that power corrupts but that it is magnetic to the corruptible. Such people

have a tendency to become drunk on violence, a condition to which they are quickly addicted.— Frank Herbert

The biggest takeaway from the debate is that nothing stops this train. - Lyn Alden

Republicans are celebrating like the race is over. The truth is it really hasn't even begun. - Vivek Ramaswamy

Much of the social history of the Western world over the past three decades has involved replacing what worked with what sounded good. - Thomas Sowell

The world is a comedy to those that think, a tragedy to those who feel. — Horace Walpole

With many of the 120,000 rules in the Federal Registry potentially set to be relitigated, ask yourself a simple question: Will the end of Chevron bring clarity to which major projects get approved or merely create more confusion and delay? We strongly suspect the latter. Judge shopping, endless appeals, and the power of a single judge to postpone projects by years will almost certainly be exacerbated by this decision. The avalanche of additional lawsuits filed by the industry alone will likely serve to clog the judiciary. - Doomberg

The Supreme Court was not meant to—and indeed is not capable of—saving us from our choice of leaders. - Sarah Isgur

I am not a church boy. I had a very, very rambunctious youth. I said in my announcement speech that I have so many skeletons in my closet that if they could all vote, I could run for king of the world. - RFK Jr. (At the same time, he denied taking a bite of a dead dog.)

Excellent summary of the very-very-big-deal Chevron decision at the bottom of this post.

We completely and utterly overuse the word, historic, but since this Supreme Court session is literally historic, I have also included commentary on the presidential immunity ruling.

While I strongly support the Chevron ruling, the immunity ruling was a no-win situation and therefore is necessarily disturbing. It is unfortunate that the question came up in the first place.

Markets

[Updated Charts](#)

> The truth is leaking out everywhere -

"The U.S. is running a very large deficit at a time when we are at full employment," Powell said. "This is something that should be a top level issue" for elected officials. "In the longer run we will have to do something sooner or later and sooner would be better than later," he said.

> No change in outlook.

> **Let's Talk About Market Tops**

Calling market tops is a fool's game.

So, let's get after it.

You know that my base case is a nasty fall in here in the near future in the price of the stock markets, followed by an inflationary boom.

Everybody's base case is that Powell and Yellen will do everything they can to get Biden reelected, so that, behind the curtain, many strange and unnatural acts will occur. Everybody is looking for weakness the first quarter of next year, when all the fiscal and monetary ammunition has been used up - at least for this round.

That all sounds good to me, except for my pesky contrarianism. Pesky contrarianism tells me that it is either not going to happen at all or it is going to happen early.

As has been the case for years, my predictions of oil prices, the dollar and interest rates have been very good (past performance is not indicative of future performance).

As has been the case for years, my predictions of the stock market have not been that good. Actually, they have been ok for the last year or so, but that good period has been overwhelmed by many years of not-so-good performance.

Let's start with oil - the basis for economic productivity.

I have been concerned for a long time about the implications of my predictions for oil prices. I'm looking for oil in, maybe, the 40s, down from around the mid-80s now.

That's an indication of a very weak economy, worldwide. (It is also an indication of very high oil prices in the future, but that is not the subject of this piece.)

My prediction of interest rates has them coming down in the near term. Historically, recessions begin after the first rate cut by the Fed. (You will not be surprised to learn that I think interest rates are going much higher in the future.)

My thought, disagreed with by very accomplished people, is that the dollar has made its high and is now heading down a long way. That is necessary in order for our

economy to have any chance of healing, but there will be hell to pay with regard to your pocketbook.

Now to the stock markets.

I think that the Dow Jones Industrial Average and the Russell 2000 have both already peaked. The S&P500 and Nasdaq are almost there - powered by the fading Magnificent 7 and the continually ascending Nvidia.

How close to a top are we?

Well, here is one interpretation we will follow, remembering that no top is final until confirmed by price action.

My predictive tools are cycles and Elliott Waves.

Cycles indicate some kind of a top in the stock market around July 15, plus or minus a month.

I was going to launch into an arcane Elliott Wave analysis, but it is all pretty simple.

We may be making the top right now.

Or the Nasdaq and the S&P500 could go through one more, minor, down up sequence prior to reaching THE top.

It also does not look like NVDA has topped, yet, which is an argument for one more down-up sequence in the Nasdaq and the S&P500.

I will follow this each week and let you know when I think the top is confirmed.

How low can we go?

We need to see how things unfold, but, as you can see in my market charts, there is the possibility that this gets pretty ugly.

Stay positive, though. On the other side of the downturn should be an inflationary boom.

Short Takes

> Some notes on Biden and the fallout from the debate:

The *New York Times* called for him to withdraw.

The *Economist* called for him to withdraw.

On the campaign trail, Biden said, "I don't debate as well as I used to," he said, but added, "I would not be running again if I didn't believe with all my heart and soul I can do this job."

In her weekly *Wall Street Journal* op ed, Peggy Noonan agreed with me that this is elder abuse.

Jeffrey Sonnenfeld, Yale professor, in *Newsweek* on X demonstrating idiotic desperation - "Could Biden's transient cognitive impairment during the debate have been the result of cold meds? It's possible, and we need to know more. If so, the meaning of what we saw is very different."

A CBS News poll conducted after last week's debate and published Sunday found that 72 percent of registered voters believe Biden does not have the "mental and cognitive

health” to serve as president, and that 72 percent of those same voters—including 46 percent of Democratic voters—believe Biden should not continue his 2024 campaign. Doomberg - "It goes without saying, but: If he is unfit to run, he is unfit to be, and was unfit to have been for many, many months. If he drops out, it lays bare a scandal of historic proportions. Quite the pickle."

Hunter Biden has officially joined the Biden Campaign and is helping run meetings in the West Wing saying he doesn't trust his father's aides. I would love to know what his security clearance is.

It seems that we have two orange men now that Biden showed up with a fake tan. We are saved! Marianne Williamson announces she will seek Democratic nomination at the convention.

Fascinating that the media is increasingly casting Jill Biden as Lucrecia Borgia without the ring.

I want to reiterate some things I have said before:

Biden is a classic old political pol and is relentlessly average - sometimes, like academically, definitely below average for his peers (76th out of 85 in his law class).

He lies consistently and has done most of his life, beginning with almost being expelled from law school for plagiarism; and if he were not a Democrat, his past, particularly with regards to segregation, would come back to haunt him.

Obama famously said, "Don't underestimate Joe's ability to fuck things up."

He has done some good things and bad things as president, but he has inflicted existential harm on the US with his Covid payments, deficits, Inflation Reduction Act, etc; the confiscation of Russian reserves; and his energy policies.

He is being abused by his wife and the Democrat establishment.

His predicament borders on tragic - not so much *The Lion in Winter* as *King Lear*.

This is about having to face the end of life, the end of power, the end of a career, the end of physical fitness and the end of mental fitness. This is very sad - gut wrenching - on a personal level. If he is not in denial, he is going through hell.

> Let's talk about Harris.

The Democrats are kinda stuck. They made a virtue-signaling, DEI hire of a black (actually half-black, half Indian) woman who dropped out of the presidential primaries with no support.

Since then, she has been unimpressive, with cackling word salads and few accomplishments, including a complete whiff as border czar. Her history with Willie Brown is interesting. She is less popular than almost anybody, including Trump.

For me, ignoring the cackling and word salad, [this](#) and [this](#) are the essence of Kamala. Most politicians speak at something like a 7th-9th grade level; Kamala continually gets to 1st grade.

However, fwiw, a recent poll indicated that she would do as well or better against Trump than a post-debate Biden would. Both would lose - she would just lose with a tighter margin. She is there, black, female and not Trump. These days, that's a qualified presidential candidate. Then, she is actively pro-abortion, which helps with Democrats and women, generally.

And, you just can't diss a black woman. Too much emotional and politically-correct investment.

So, Harris is the odds-on favorite, unless she decides to withdraw. There will likely be a great deal of pressure on her from some quarters to withdraw, including bribes of soft landings.

What do I think about that?









I do not support her at all - she is not dumb or useless; she is just not presidential material - but ...

she does not have cognitive issues and is more stable than Trump.

We have nothing but terrible choices and she is one of them.

And, there we are.

Betting odds, 7/3/24 –

Who will win the 2024 Democratic presidential nomination?					
Contract		Latest Yes Price		Best Offer	Best Offer
 Kamala Harris		48¢ 11c↑		48¢ Buy Yes Buy No	53¢
 Joe Biden		27¢ 17c↓		27¢ Buy Yes Buy No	74¢
 Gavin Newsom		11¢ 1c↑		12¢ Buy Yes Buy No	89¢
 Michelle Obama		10¢ 1c↑		11¢ Buy Yes Buy No	90¢
 Gretchen Whitmer		8¢ 1c↓		8¢ Buy Yes Buy No	93¢
 Hillary Clinton		3¢ NC		4¢ Buy Yes Buy No	97¢
 Pete Buttigieg		2¢ NC		2¢ Buy Yes Buy No	99¢
 Sherrod Brown		2¢ 1c↑		2¢ Buy Yes Buy No	99¢

The Bee is just on fire.

So, Kamala has this recurring tag line in her speeches, essentially any speech for any occasion, to the point that it is about to achieve meme status:

"To see what can be, unburdened by what has been."



Report: Kamala About To Unburden Herself From What Has Been

> Michelle Obama you ask?

Ok, now we are devolving into a popularity contest with only a remote connection to real-world politics - who are the cool kids?

A poll came out saying Michelle could beat Trump. What's not to like? A rational black female.

Back in the day, I read her biography. Once you get past some dicey, really well-paid jobs, you get the picture of an intelligent (Harvard law), more-or-less normal person who hated politics.

She was an enthusiastic Harvey Weinstein supporter and Malia was an intern with Weinstein.

She agreed that Barack could run for president if he quit smoking. He agreed, ran and didn't quit.

She got to see politics up close and personal, but has never been a politician. If elected, she would have less experience than even her husband had when he was elected.

Bottom line, terrible choice, but better than the other three I have been discussing. Although she would want to make her own mark on the world, she would have access to her husband and his advisors, so there would be some real-world knowledge in place.

If Democrats choose Michelle, Republicans should choose the Rock. (I have no idea whether he is Republican - just making a point. We will be reaching the ultimate conclusion of our reality-show politics.

Oprah!)

> Sarah Isgur -

Chevron has been dead for 20 years. Not even cited by SCOTUS in 10 years.

The main effect of this ruling will be that agencies can't switch positions every 4 years, which will bring stability to the law.

> An interesting thought - I have insisted that the Fed has been outside the law for a long time - they have been doing strange things and essentially daring anyone to come after them. Richard Field on X -

Not a lawyer, but it appears the Supreme Court's overturning the Chevron Doctrine effectively eliminates almost all of the programs the Fed has used to bailout the banks since 2008 ... Fed has relied on a very ambiguous statute to say it has the authority to implement these programs ...

> Probably has nothing to do with the upcoming election -

The Biden administration said this week that it opposed gender-affirming surgery for minors, the most explicit statement to date on the subject from a president who has been a staunch supporter of transgender rights.

The White House announcement was sent to *The New York Times* on Wednesday in response to an article reporting that staff in the office of Adm. Rachel Levine, an assistant secretary at the Department of Health and Human Services, had urged an influential international transgender health organization to remove age minimums for surgery from its treatment guidelines for minors.

Unreasonable totalitarianism or putting him out of his misery? - You decide.

North Korea has publicly executed 22-year-old man for listening to K-pop

> From *The Telegraph*

Dolly Parton has been accused of "white saviourism" for giving millions of free books to poor children.

The reading scheme, called Imagination Library, was launched by the country and western star in the US more than three decades ago. It now operates in the

UK, Ireland, Canada and Australia, and has been lauded for helping to drive up literacy rates.

It gives disadvantaged pupils the same access to books as their middle-class peers by sending high-quality titles directly to the homes of under-fives.

But according to a recently published academic paper, the award-winning scheme is racist by reinforcing notions of “white privilege and heteronormativity” and not representing enough cultural diversity, disability, trans and bisexual gender identities and non-traditional family structures.

> Maybe the cheese-eating surrender monkeys are onto something -

France actually had election results within 24 hours using paper ballots and requiring an ID with restricted mail in ballots.

However, the United Kingdom did the same - within 24 hours, paper ballots, requiring ID with restricted mail in ballots.

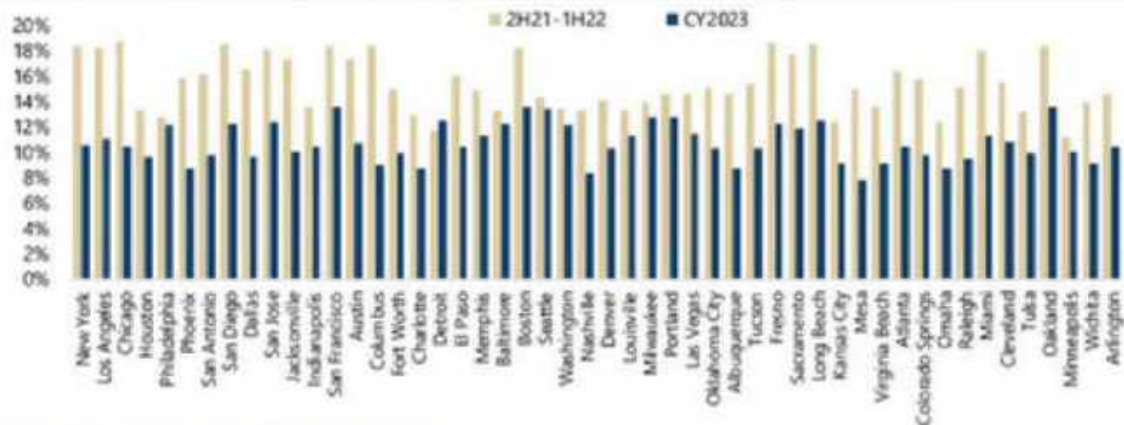
The UK is the role model for political transitions; the French - not so much.

> Speaking of which, France swung "far right" in its recent elections. The pendulum swings, people. The left routed the Tories in the UK. Milei won in Argentina; Meloni won in Italy. The times, they are a changin'.

> You probably know that the CPI heavily manipulates data and does not measure anything particularly useful.

"The Chapwood Index's actual costs on the top 150 items Americans buy in the 50 largest cities rose by between 7.8% and 13.6% last year. In 2022, the range was 11.3% to 18.8%."

Exhibit 9: The Chapwood Index (annual actual price increase of 150 items in 50 largest US cities)



Source: The Chapwood Index (Chapwoodindex.com)

> Trump would do some good things if elected and he would do some bad things. It's the authoritarian threat that really concerns me. This week, he said he would establish a "televised military tribunal" to go after Liz Cheney. Not any shade of gray - totally, irredeemably unacceptable. Now, Trump says a lot of wild things he doesn't mean, and this may be yet another one of those. However ...

> Nature is healing

After 3+ years of investigations, prosecutors dismantled an Antifa cell for the first time anywhere in the US. All 12 Southern California Antifa members were convicted. At sentencing, the remaining were all sent to prison or jail.

> Authoritarianism is not just a problem on the right



The New York Times



GIVE THE TIMES

OPINION
GUEST ESSAY

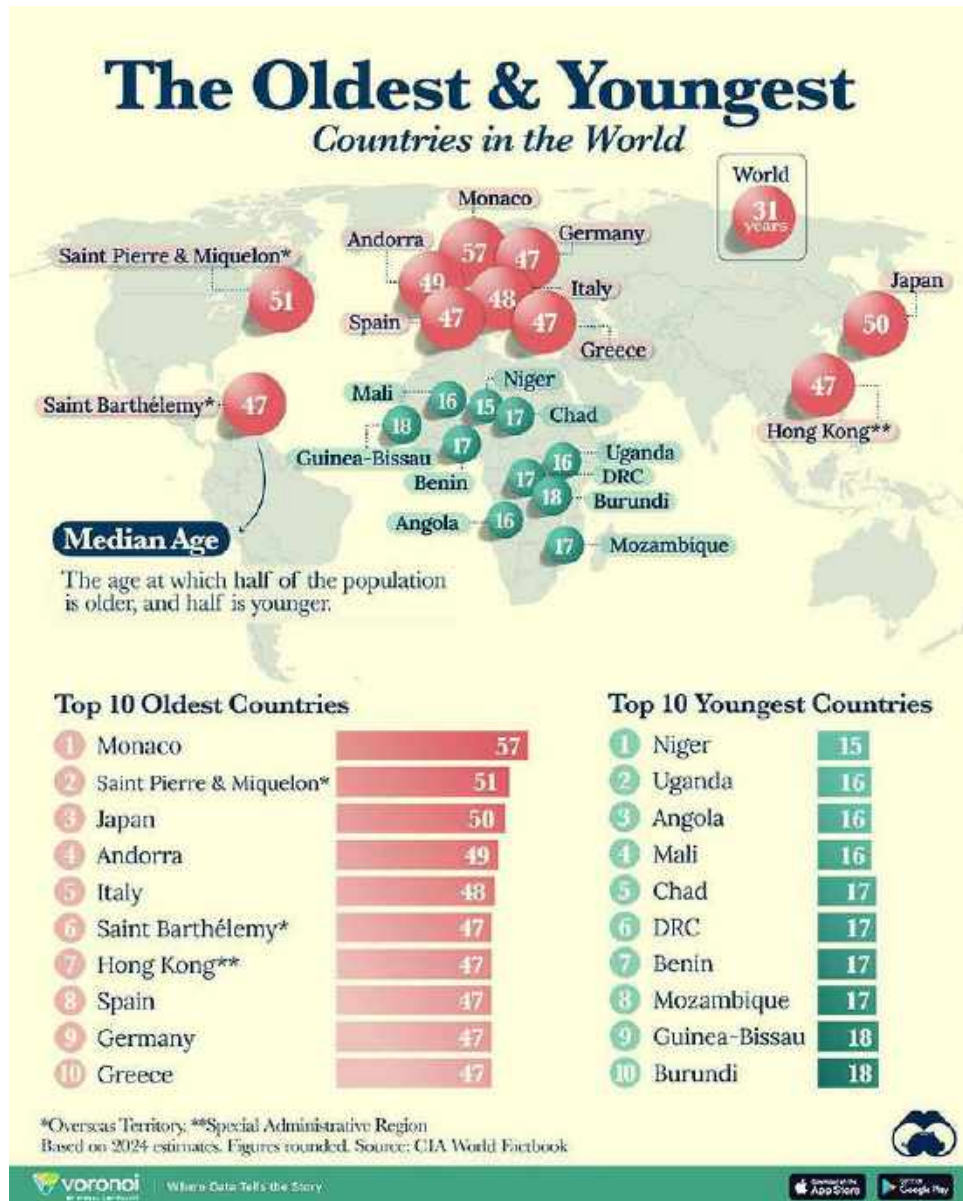
The First Amendment Is Out of Control

July 2, 2024, 5:01 a.m. ET

- > And another abuse of executive power bites the dust -
US judge halts Biden administration's pause on liquid natural gas permits.
- > Ben Hunt, in his eloquent way, stating his reinforcement of my world view -
The Great Ravine is the end of an age. It is the end of the cheap money and cheap labor of easy globalization. It is the end of the unipolar moment of American dominance and its wars of choice and drone. It is the end of trust in our most crucial institutions – all of them! – charged with the core social functions of public health, public education, public finance and public safety. The Great Ravine is the return of our worst impulses. It is the return of man-abetted if not man-made pestilence, famine and drought. It is the return of inflation. It is the return of Total War. It is the return of the Strong Man. It is the return of the mob.
What we all felt last Thursday night – the sadness, the shock, the disbelieving that this was actually happening, the familiarity of a private tragedy being played out in public on the greatest of stages, the wave of new common knowledge emanating like an earthquake from that studio in Atlanta – this is what the descent into the Great Ravine feels like.
We will feel this many more times in the very near future.
The only way out is through, and the only way through is together. Not from above through a political party, but from below through a community.

> Keep your eye on Israel and Hezbollah. This could be a very dangerous next-big-thing. (I apologize for using the word, could. How about, I give it 80/20.)

> Africa is the future of the world



> Most of us understand the Supreme Court to be divided 6–3, with conservatives in the majority. But according to Harvard law professor Noah Feldman, the just-wrapped session makes clear that there are really three groups on the court: the liberals (Kagan, Sotomayor, and Brown Jackson); the “centrist conservatives” (Roberts, Kavanaugh,

and Coney Barrett); and the “arch conservatives” (Thomas, Alito, Gorsuch). (Bloomberg)

[The President's speech](#) in the movie, *Independence Day*, is a stirring speech, creating many cheers and tears in its time.

X put it all into perspective with this rendering of modern-day reactions to that speech - [here](#).

> How quaint

Nigel Farage (British politician): “I was asked the other day, what was I going to do for the black community. Do you know what I said? Nothing, absolutely nothing. I couldn’t give a damn if you’re black or white, gay or straight. I really don’t care. You’ll be judged by your character, by your ability by your contribution to society”

It Ain't Easy Being Green

> Glacier National Park is replacing signs that predicted its glaciers would be gone by 2020.

> Trade-offs, trade-offs, trade-offs

More than 1300 square kilometres of cropland worldwide was covered by solar panels in 2018, an area that could be producing 4 quadrillion calories per year.

> Shell is turning away from its (unprofitable) renewables bets, it just announced it's halting the construction of one of the largest biofuels plants in Europe.

> Over the past 12 months, thieves in the Seattle metro area have stolen over 100 electric vehicle charging cables, driven mostly by soaring copper scrap prices.

> The Department of Interior announced its approval of a large-scale offshore wind turbine project in New Jersey on Tuesday.

The Interior Department stated that the Atlantic Shores South project will be located approximately 8 miles from the New Jersey shore and involve the construction of 195 wind turbines that will be supported by 10 offshore substations with subsea transmission cables “potentially making landfall in Atlantic City and Sea Girt, New Jersey.”

The project will consist of two wind farms that will have the capacity to generate 2,800 megawatts of electricity that can power up to one million homes, the DoI said. The department said it's the ninth offshore wind energy project at a commercial scale to get federal approval.

These nine projects will generate up to 13 gigawatts of offshore wind-generated energy, enough to power up to 5 million homes.

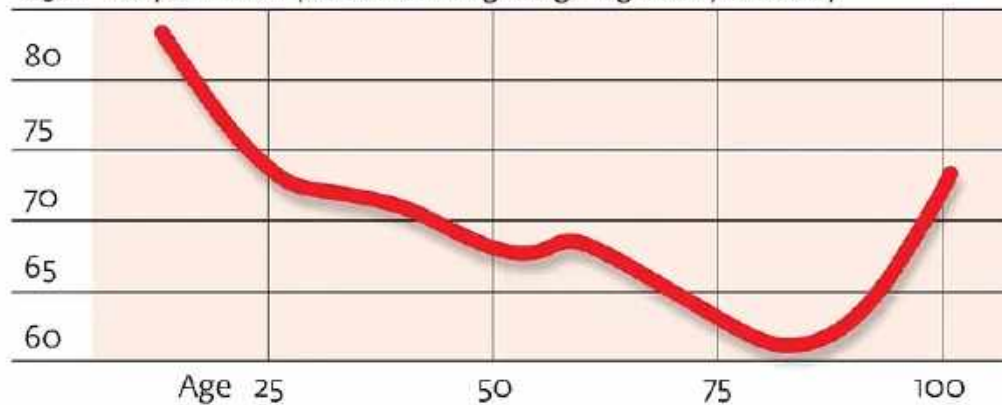
Miscellany

LOL

THE HUMOR CLIFF

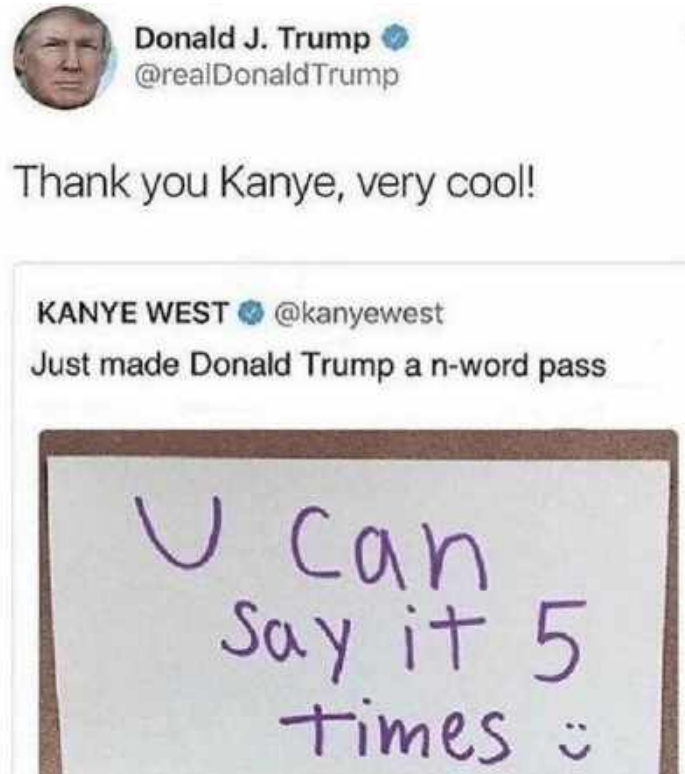
Studies show that people laugh freely and openly when young, but less so as they age, starting around 23. The laughter tends to return, however, in the twilight year — perhaps as we work less and spend more time with loved ones.

85% People who reported smiling/laughing a lot yesterday

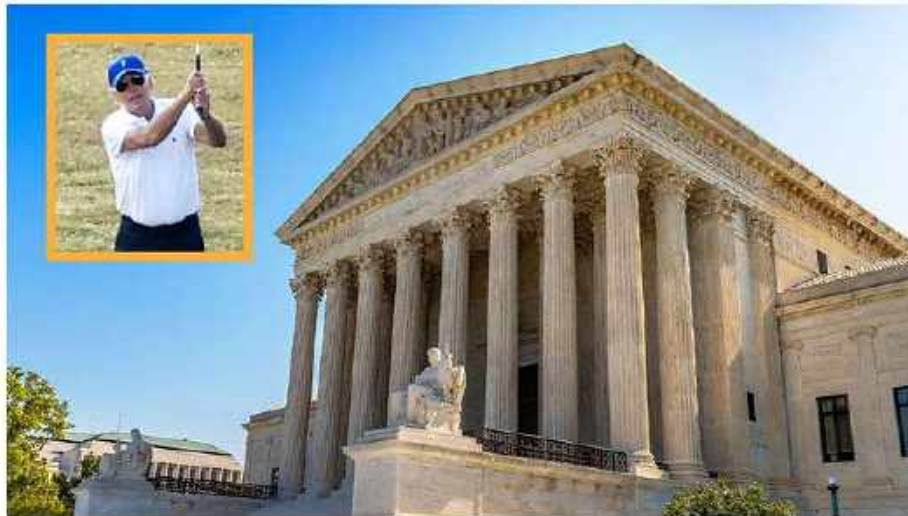


Gallup data 2013 n = 1.4 million; according to the authors of "Humor, Seriously"

Who knew these things existed, and where can I get one?



This is one of those, the devil made me do it, things. No political statement, just wit on multiple levels. Sometimes I am simply in awe. From *The Bee*



Supreme Court Votes 6-3 That Biden Never Had a Six Handicap

Next level



The Babylon Bee ✓ @TheBabylonBee · 4h

...

Chaos In France As Rival Protesters Keep Trying To Surrender To Each Other buff.ly/44ORGox





[OLIVER BATEMAN DOES THE WORK The Work of Chevron Deference](#)

As of today, here's some work law students won't have to do anymore

[OLIVER BATEMAN DOES THE WORK](#)

JUN 29, 2024

Chief Justice John Roberts is 69 years old

For nearly 40 years, "Chevron deference" has been a cornerstone of American administrative law. The doctrine, [established in 1984](#) in a decision by John Paul Stevens that has since been anthologized in countless administrative law casebooks, required courts to defer to federal agencies' reasonable interpretations of ambiguous statutes. But earlier today, [the Supreme Court overturned Chevron in a 6-3 decision](#), fundamentally altering the balance of power between courts and agencies.

This seismic shift raises profound questions about so-called “expertise,” democratic accountability, and the nature of governance in a complex, polarized society. To understand its implications, we need to look beyond the legal arguments and examine the deeper tensions at play.

In the interest of keeping this Substack in operation past 2024, I’m going to start pushing much harder to secure paid subscriptions. I want this to be a near-daily publication, a publication that ceaselessly explores “the work” in its myriad forms. Click that little heart, leave a sweet comment, and then sign up below to support this work.

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John Roberts Does the Work

The majority opinion, authored by Chief Justice John Roberts, held that Chevron was incompatible with the Administrative Procedure Act (APA) and the proper role of courts in interpreting statutes. The core of the majority's argument is that Chevron contradicts the text of the APA, which directs courts to “decide all relevant questions of law” when reviewing agency actions.

Roberts writes:

Chevron defies the command of the APA that 'the reviewing court'—not the agency whose action it reviews—is to 'decide all relevant questions of law' and 'interpret . . . statutory provisions.' §706 (emphasis added). It requires a court to ignore, not follow, 'the reading the court would have reached' had it exercised its independent judgment as required by the APA.

The majority also argues that agencies lack special competence in resolving statutory ambiguities compared to courts. While agencies may have technical expertise, the majority contends that statutory interpretation is squarely within the judicial wheelhouse.

Additionally, the majority claims Chevron rests on a fiction — the idea that statutory ambiguities represent an implicit delegation of interpretive authority from Congress to agencies. Roberts argues there's no basis to assume Congress intends such delegation. Finally, the majority opinion emphasizes Chevron's alleged unworkability, pointing to inconsistent application by lower courts and the proliferation of exceptions and limitations over time. The majority portrays Chevron as a failed experiment that has only made administrative law more complex and unpredictable.

Elena Kagan Is Here for It

Justice Elena Kagan's dissent offers a spirited defense of Chevron and a not-half-bad critique of the majority's reasoning.

On the APA argument, Kagan contends that deferring to reasonable agency interpretations is fully compatible with a court “deciding” questions of law. She notes

that courts still independently determine whether a statute is ambiguous and whether the agency's reading is reasonable.

Kagan forcefully disputes the claim that agencies lack relevant expertise:

The idea that courts have 'special competence' in deciding such questions whereas agencies have 'no[ne]' is, if I may say, malarkey.¹ Answering those questions right does not mainly demand the interpretive skills courts possess. Instead, it demands one or more of: subject-matter expertise, long engagement with a regulatory scheme, and policy choice.

On Congressional intent, the dissent argues Chevron reflects a sensible presumption about what Congress would want when statutes contain ambiguities. Given agencies' expertise and accountability, Kagan contends Congress would generally prefer agencies rather than courts to resolve such ambiguities.²

Perhaps most pointedly, the dissent accuses the majority of violating principles of [stare decisis](#) — the doctrine of respecting precedent. Kagan emphasizes Chevron's deep entrenchment in administrative law and argues overturning it will massively disrupt settled expectations across the government and economy.

The Illusion of Expertise

One of Chevron's main justifications was that agencies have specialized expertise. Recent events, however, have forced us to question what “expertise”³ really means in practice.

The COVID-19 pandemic provides one such example. Agencies like the CDC issued guidance on measures like 6-foot distancing and masking that seemed to change frequently, [often with minimal evidence](#) beyond what we now know amounted to little more than feels and vibes. These decisions reshaped daily life for millions, yet at times appeared to be made on a whim.

This isn't to say agencies never have valuable expertise. But it's a reminder that “expert” decision-making can be influenced by politics, groupthink, and simple human error just like any other kind of decision-making.

The question, then, isn't simply whether agencies or courts have more expertise. It's about how we evaluate and apply expertise in a democratic society. When does technical knowledge trump other considerations? How do we balance expertise with other values like transparency and accountability?

Unelected Officials and Democratic Accountability

Both federal agencies and federal courts exist partly outside the reach of democratic majorities. They're staffed by unelected officials who often serve for decades. So when we debate Chevron, we're really debating which set of unelected officials we trust more.

Federal judges, while unelected, do go through a public confirmation process. Their decisions are generally public and must be justified in written opinions. There's a degree of transparency and accountability there, even if it's far from perfect.

Agency decision-making, in contrast, often happens behind closed doors. Career bureaucrats who never face public scrutiny can shape major policies. There's value in their expertise, but also risks of capture by special interests or detachment from democratic will.

So while neither courts nor agencies are directly accountable to voters, courts at least operate with a bit more sunlight. This doesn't necessarily make them better decision-makers, but it does change the nature of their power.

The Red-Blue Power Shift

Overturing Chevron doesn't just move power from agencies to courts in the abstract. In practice, it likely shifts power from blue states to red states, even if indirectly. Federal agencies, especially under Democratic administrations, have often pushed progressive policies that couldn't get through Congress. Republican-appointed judges have frequently been the ones trying to rein in what has been variously called the "administrative state," the "deep state," and (at least by me and my late father) the "diape(r) state."

By giving courts more power to interpret statutes, the Supreme Court has created more opportunities for conservative judges to block liberal agency actions. It's not a direct transfer of power to red states, but it tilts the playing field in their favor. This isn't necessarily good or bad — it depends on your political perspective. But it's a valuable subtext to the whole Chevron debate that sometimes goes unmentioned.

Implications and Ripple Effects

No matter how you slice it, the fall of Chevron will have far-reaching consequences:

- **Increased judicial power:** Federal judges will now have the final say on many more questions of statutory interpretation. This shifts significant power from agencies to courts.
- **Regulatory uncertainty:** Many longstanding agency interpretations may now be vulnerable to fresh legal challenges. This could create instability across numerous regulatory domains.
- **Slower rulemaking:** Agencies may become more cautious in interpreting statutes, fearing stricter judicial review. This could slow the regulatory process. "Overproduced elites" who can't find a job (i.e., not elites at all) should probably stop hoping for anything resembling federal student loan debt relief, despite Biden's various confused efforts on that front.
- **More technical/scientific questions in court:** Judges will be forced to grapple with complex technical and scientific issues previously left largely to agency expertise.
- **Heightened political polarization of administrative law:** Without Chevron as a mediating doctrine, judicial ideology may play a larger role in regulatory cases.

Beyond administrative law, this decision may signal broader shifts in the Court's jurisprudence. It suggests a willingness to overturn major precedents and a skepticism

toward agency power. This could foreshadow further changes in areas like executive authority and the regulatory state.

The decision also exemplifies the current conservative majority's muscular approach to shaping the law. Rather than incremental change, the Court seems increasingly willing to issue sweeping rulings that dramatically alter the legal landscape.

Deeper Questions for the Deep State

Ultimately, the fall of Chevron forces us to grapple with some fundamental tensions in our system:

- How do we balance expertise with democratic accountability? We want people who understand complex issues making decisions, but we also want those decisions to reflect the will of voters.
- In an age of polarization, is there any truly neutral arbiter? Both agencies and courts can be influenced by ideology. Is there a way to interpret laws that isn't inherently political?[4](#)
- How much stability do we need in governance? Chevron provided a degree of consistency in regulatory interpretation. Without it, will policy swing more dramatically with each change in administration or court composition?[5](#)
- Who do we trust to make decisions when Congress hasn't been clear? Agencies may have subject-matter expertise, but courts have experience in textual interpretation. Which skill set do we value more?[6](#)
- How do we ensure that "expertise" is genuine and applied in the public interest, rather than being a shield for bureaucratic or ideological agendas?[7](#)

These questions don't have easy answers, but they're crucial to understanding the real stakes of the Chevron debate.

The Way Forward

The demise of Chevron doesn't solve these challenges; it simply changes the battlefield on which they'll be fought. Moving forward, we should consider:

- More robust public debate about agency decision-making. If courts will be scrutinizing agency interpretations more closely, agencies need to be more transparent about their reasoning.
- Congress may need to legislate with more specificity. If they want agencies to have interpretive power, they'll need to delegate it more explicitly.
- Reforms to make both the judiciary and agencies more accountable without compromising their independence.[8](#)
- Voters paying more attention[9](#) to lower court appointments, not just Supreme Court picks. These judges will now have much more influence over regulatory policy.
- Developing better mechanisms for incorporating genuine expertise into decision-making while maintaining democratic accountability.

- Rethinking how we train judges, given their expanded role in technical and scientific matters.

The fall of Chevron deference is about much more than administrative law. It's about power, expertise, democracy, and the fundamental challenge of governing a complex society.

By shifting power from agencies to courts, the Supreme Court hasn't solved these challenges. It has simply changed who gets the final say in answering them. In the short term, this likely means more conservative influence over regulation. But in the long term, it means we all need to think harder about who we trust to make decisions and why.

The experts haven't gone away. The hard questions haven't disappeared. We've just changed the rules of the game. Whether that's an improvement remains to be seen. But one thing is certain: the debate over how to balance expertise, democratic will, and the rule of law is far from over. If anything, it's just beginning.

As we navigate this new landscape, we'll need to remain vigilant. We must ensure that in our quest to rein in unaccountable bureaucrats, we don't simply empower unaccountable judges. We must find ways to acknowledge expertise without blindly deferring to it. And we must strive to create a system that can adapt to complex challenges while remaining true to democratic principles.

The death of Chevron marks the end of an era in American administrative law. But it also marks the beginning of a new one — one where we'll have to grapple more directly with the tensions inherent in modern governance. It's a daunting task, but also an opportunity to build a system that better serves the needs of a large and rapidly changing society.

In the end, the fall of Chevron serves as a reminder that even seemingly settled law can change dramatically. As the late Justice William Brennan was fond of remarking, in a world of nine justices, all it takes is five votes to rewrite the rules. That's a sobering thought for anyone who cares about legal stability and the rule of law. But it's also a call to engagement — a reminder that the shape of our governance is not fixed, but continually evolving. It's up to all of us to help guide that evolution in a direction that serves the common good. [We've got to do what we must, because we can.](#)

If you're one of the many subscribers with access to these posts, I'm urging you to click the heart, leave a comment, restack the article, or otherwise engage in some fashion. I hate making so gauche a request — I've always been a "take it or leave it" sort of person who has asked for nothing — but we are now late in the evening of my dis-CONTENT, and only extremely uncouth marketing methods (i.e., outright pleas for assistance) can ensure the perpetuation of this work. Thanks for everything you do!

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1 Malarkey!

2

Of course they would. A lot of modern statutes are massive and messy, and courts are pretty much only qualified to slap legislatures on the wrists for bad drafting — the now-overturned *Roe v. Wade*, for all its other merits and demerits, was a leading example of [bad judicial draftsmanship](#) in the course of attempting to legislate from the bench. Blackmun, a well-meaning, fog-brained homunculus who kept track of every meal he ever ate and every book he ever read, was one of the sloppiest writers and legal analysts in the Court's recent history. The most egregious example of his kitchen-sink approach to writing was *Flood v. Kuhn*, an opinion that a) comes to a deeply unsatisfying and even rather stupid conclusion about baseball's sacrosanct (and wholly undeserved) anti-trust exemption and b) appears to exist primarily so that Blackmun could list the names of his favorite baseball players: "Then there are the many names, celebrated for one reason or another, that have sparked the diamond and its environs and that have provided tinder for recaptured thrills, for reminiscence and comparisons, and for conversation and anticipation in-season and off-season: Ty Cobb, Babe Ruth, Tris Speaker, Walter Johnson, Henry Chadwick, Eddie Collins, Lou Gehrig, Grover Cleveland Alexander, Rogers Hornsby, Harry Hooper, Goose Goslin, Jackie Robinson, Honus Wagner, Joe McCarthy, John McGraw, Deacon Phillippe, Rube Marquard, Christy Mathewson, Tommy Leach, Big Ed Delahanty, Davy Jones, Germany Schaefer, King Kelly, Big Dan Brouthers, Wahoo Sam Crawford, Wee Willie Keeler, Big Ed Walsh, Jimmy Austin, Fred Snodgrass, Satchel Paige, Hugh Jennings, Fred Merkle, Iron Man McGinnity, Three-Finger Brown, Harry and Stan Coveleski, Connie Mack, Al Bridwell, Red Ruffing, Amos Rusie, Cy Young, Smokey Joe Wood, Chief Meyers, Chief Bender, Bill Klem, Hans Lobert, Johnny Evers, Joe Tinker, Roy Campanella, Miller Huggins, Rube Bressler, Dazzy Vance, Edd Roush, Bill Wambsganess, Clark Griffith, Branch Rickey, Frank Chance, Cap Anson, Nap Lajoie, Sad Sam Jones, Bob O'Farrell, Lefty O'Doul, Bobby Veach, Willie Kamm, Heinie Groh, Lloyd and Paul Waner, Stuffie McInnis, Charles Comiske, Roger Bresnahan, Bill Dickey, Zack Wheat, George Sisler, Charlie Gehringer, Eppa Rixey, Harry Heilmann, Fred Clarke, Dizzy Dean, Hank Greenberg, Pie Traynor, Rube Waddell, Bill Terry, Carl Hubbell, Old Hoss Radbourne, Moe Berg, Rabbit Maranville, Jimmie Foxx, Lefty Grove. [Footnote 3] The list seems endless. And one recalls the appropriate reference to the "World Serious," attributed to Ring Lardner, Sr.; Ernest L. Thayer's "Casey at the Bat"; [Footnote 4] the ring of "Tinker to Evers to Chance"; [Footnote 5] and all the other happenings, habits, and superstitions about and around baseball that made it the "national pastime" or, depending upon the point of view, "the great American tragedy." Yes, this silly prose really exists in black and white in the U.S. Reports!

3

In his provocatively titled book [The Death of Expertise](#) (click there to read it), Georgetown PhD and long-time public intellectual Tom Nichols serves up a spicy takedown of what he sees as America's growing disdain for established knowledge. While I wasn't sold on his argument, some of you might be. Nichols claims we're witnessing not just healthy skepticism, but a full-blown rejection of expertise in favor of a "my ignorance is just as good as your knowledge" mentality. He paints this trend as a potential death knell for informed democracy — a bit dramatic, perhaps, but the man [is good at driving engagement](#), if nothing else.

Nichols points his finger at various culprits: the internet's information buffet, our tendency to mistake Google searches for genuine understanding, and a culture that seems to value feeling smart over actually being smart. He argues that while experts aren't infallible (shocking, I know), they're still more likely to get things right in their fields than your average Joe armed with a Wikipedia article (sure, why not). The book takes us on a tour of how this expertise-shunning plays out across different areas, from vaccine debates to political discourse.

What I found most interesting, even if I didn't fully buy into the doom and gloom, was Nichols' exploration of what actually constitutes expertise. It's not just about degrees, he argues, but also experience, peer recognition, and a willingness to keep learning and admit when you're wrong (imagine that in today's Twitter debates). He warns that if we continue down this path of expertise-denial, we might end up with a society that can't solve its big problems (probably) and falls prey to snake oil salesmen in suits (I mean, that's pretty much the American Dream and our proud 248-year tradition; [read Jackson Lears](#) for more on that). While you might not agree with everything Nichols writes, his book certainly provides food for thought in our age of slacktivist hot takes and fly-by-night Substack experts.

[4](#)

Probably not.

[5](#)

Of course. It'll be lots of fun for the hot-take and extremely-online outrage classes in both parties.

[6](#)

I know where I'm laying the heavy jack...

[7](#)

You can't. It's all frens/enemas now, kiddos.

[8](#)

I think we should elect them all, but nobody agrees with me. [You can read that "take" here](#): "As Melinda Gann Hall and Chris Bonneau argue in their book [In Defense of Judicial Elections](#), elites trumpeting the merits of judicial independence are essentially "waging war on the democratic process." The Supreme Court offers a particularly glaring example of these undemocratic forces at work. [Only four of the current justices were appointed during the past two presidential administrations](#), meaning

millions of voters in their late twenties and early thirties have had no say in the selection of a majority of the court's personnel. Granted such tremendous job security, the justices are not only protected from the more sordid realities of politics but sometimes completely out of touch with reality. Former justice David Souter, who retired in 2009, joined the court in 1990 [never having owned a television set and unaware of the existence of Diet Coke or the music of Motown](#). More troublingly, recent appointee Elena Kagan, the court's youngest member at 54, has admitted "[the justices are not necessarily the most technologically sophisticated people](#)" and that social media remains "a challenge for us"—a highly problematic statement given the complicated cases about [wiretapping, surveillance, and digital communications](#) that the Supreme Court must decide."

[9](#)

They won't. There's too much "timepassing" work with the Post Hand (PH) and Goon Hand (GH) left to do to waste prime edging hours on that geek/nerd stuff.

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The Morning Dispatch on the presidential immunity question

When the Supreme Court heard oral arguments in the case of Trump v. United States on the question of presidential immunity from prosecution, there was [laughter in the chamber](#) as Justice Samuel Alito proposed a hypothetical having to do with a president ordering SEAL Team Six—elite U.S. Navy commandos—to do something “plausibly” illegal, even if the president clearly had a right to give them an order. It seemed an outlandish hypothetical at the time—and indeed, Alito caveated the notion by saying the U.S. Navy officers could not follow orders that would require them to break the law. But after the Supreme Court's 6-3 ruling on Monday holding the president had absolute immunity from prosecution for some core executive functions, it's safe to say the scenario wasn't put to bed quite as conclusively as we might have expected.

The court on Monday granted some immunity to presidents for official acts performed while in office, placing presidential activity into three “buckets,” to [coin a phrase](#): private acts, core presidential functions, and all other official acts for which the president has “presumptive” immunity. Many questions remain about how that ruling—which former President Donald Trump hailed as a victory—will play out in practice, including what exactly constitutes an official act of the president and how

courts should make that determination, as well as what effect this will have on the cases against Trump currently winding their way through the court system.

The decision was handed down with high drama, the third of the day and the very last of the term. Chief Justice John Roberts [penned the majority opinion](#), joined in full or in part by the five other conservative justices, which held that a president is “immune from prosecution for an official act unless the government can show that applying a criminal prohibition to that act would pose no ‘dangers of intrusion on the authority and functions of the executive branch.’”

So why is the court ruling on presidential immunity? It started with the four-count indictment special counsel Jack Smith [brought against Trump](#) last August. The former president’s legal team moved in October to have the special counsel’s charges dismissed on the grounds that a president has absolute immunity for any actions taken while in office.

The judge in the case, Tanya Chutkan, issued [a sweeping ruling against](#) the former president in December, holding that former presidents had no immunity at all from criminal prosecution for acts performed while in office. “Defendant’s four-year service as commander in chief did not bestow on him the divine right of kings to evade the criminal accountability that governs his fellow citizens,” she [wrote in the ruling](#).

A three-judge panel on the Washington, D.C., Court of Appeals took up the immunity question in January and affirmed Chutkan’s [ruling in February](#). The Supreme Court decided to hear the immunity question three weeks later.

On Monday, the justices provided their answer. As was anticipated, the court disagreed with the D.C. circuit’s expansive position that a former president can be prosecuted for any official act once out of office. But the majority opinion not only rejected the lower court’s ruling, it also articulated a new, broad vision of “absolute immunity” from criminal prosecution for a president’s “actions within his conclusive and preclusive constitutional authority.”

In other words, if the conduct in question involves the exercise of a “core” executive power clearly outlined in the Constitution—like pardoning or removing appointed executive branch officials—then the president is immune from criminal prosecution, full stop. “Congress cannot act on, and courts cannot examine, the president’s actions on subjects within his ‘conclusive and preclusive’ constitutional authority,” Roberts wrote.

The majority added that the president’s intentions—however corrupt—cannot and do not provide an exception to this absolute immunity, nor can they be used to help parse whether an action was itself private or official. “Such a ‘highly intrusive’ inquiry would risk exposing even the most obvious instances of official conduct to judicial examination on the mere allegation of improper purpose,” Roberts asserted.

The idea that there are some activities for which a president could never be prosecuted—regardless of obvious nefarious motives—raises some problematic

hypotheticals for the use of presidential power, as Sarah and David pointed out on [yesterday's episode of Advisory Opinions](#). The president, for example, presumably now has free reign to corruptly deploy exclusive executive power, like by selling pardons to the highest bidder. The ruling creates “an almost sovereign view of immunity,” David said.

There is a second bucket of so-called “official” acts for which a president could face prosecution: those “within the outer perimeter of his official responsibility,” Roberts wrote, without explicitly defining what kind of acts might fall within this “outer perimeter.”

“Such an immunity is required,” he nevertheless argued, “to safeguard the independence and effective functioning of the Executive Branch, and to enable the President to carry out his constitutional duties without undue caution.”

To overcome such “presumptive immunity” for certain official acts, prosecutors would have to show they weren’t intruding “on the authority and functions of the Executive Branch.” Only once that extremely high bar had been cleared—likely affirmed by a court ruling—could such prosecution move forward.

In the final bucket, the Supreme Court did affirm that the president has no immunity for unofficial acts—things that have nothing to do with the job of the presidency. In that regard, a president would be just as open to prosecution as any of us commoners. The trick now for the Smith case is deciding what alleged conduct in the indictment constitutes an official act (as well as which kind of “official”) and what constitutes a private act. The district court will now have to determine “which part of this was candidate Trump,” Gabriel Malor, a Virginia appellate lawyer, told TMD. “Is the January 6 speech candidate Trump or President Trump? Is the fake electors scheme candidate Trump or President Trump?”

On one of these questions, the Supreme Court made it easy. Trump is [alleged to have threatened](#) to fire then-acting Attorney General Jeffrey Rosen after Rosen refused to go along with the former president’s efforts to cast doubt on the election results and pressure the states to submit fraudulent alternate slates of electors. Monday’s majority opinion says that clearly falls within the president’s “core” executive acts, and so for that conduct Trump is immune from prosecution.

Trump’s efforts to pressure former Vice President Mike Pence into stopping the certification of the 2020 election results on January 6, however, could potentially fall outside the presumptively immune activity. While the majority opinion remanded the specific question to the district court, Roberts suggested prosecutors could argue that Pence’s role as president of the Senate is not an executive branch function—but rather a legislative role under Article I of the Constitution. If so, the president’s communications about that role could be prosecuted without intruding on the function of executive authority.

Trump could also face legal exposure for his communications with private attorneys and state-level officials pushing for the election to be overturned, as well as his public statements to supporters on January 6—which may be considered private actions. Justice Amy Coney Barrett’s concurring opinion on Monday provided a roadmap for prosecutors on some of this conduct. “For example, the indictment alleges that the President asked the Arizona House Speaker to call the legislature into session to hold a hearing about election fraud claims,” she wrote. “The President has no authority over state legislatures or their leadership, so it is hard to see how prosecuting him for crimes committed when dealing with the Arizona House Speaker would unconstitutionally intrude on executive power.”

As our own David French explained, “No one should think that this [opinion] means that as a legal matter, the case against Trump is in jeopardy in its totality.” Trump can definitely be prosecuted for the “unofficial” conduct related to his effort to hold onto power—and potentially also the “official” conduct on the perimeter.

Nevertheless, the former president was quick to claim this ruling for his column. “BIG WIN FOR OUR CONSTITUTION AND DEMOCRACY,” Trump [wrote on Truth Social](#) at 10:41 a.m. ET, just minutes after the court had published its decision. “PROUD TO BE AN AMERICAN!”

Trump continued “truthing” in that vein for the rest of the day, praising the wisdom of the decision even if it’s perhaps something of a mixed bag for him legally. “THE SUPREME COURT DECISION IS A MUCH MORE POWERFUL ONE THAN SOME HAD EXPECTED IT TO BE,” he [wrote Monday](#) afternoon. “IT IS BRILLIANTLY WRITTEN AND WISE, AND CLEARS THE STENCH FROM THE BIDEN TRIALS AND HOAXES, ALL OF THEM, THAT HAVE BEEN USED AS AN UNFAIR ATTACK ON CROOKED JOE BIDEN’S POLITICAL OPPONENT, ME. MANY OF THESE FAKE CASES WILL NOW DISAPPEAR, OR WITHER INTO OBSCURITY. GOD BLESS AMERICA!”

Despite what the former president suggested, the cases are unlikely to just “disappear”—at least not before the election—and he certainly didn’t get everything he wanted. At the most fundamental level, in fact, the court shot him down: “Trump asserts a far broader immunity than the limited one we have recognized,” the [chief justice wrote](#) in the majority opinion.

But Trump may be less interested in the legal question than the logistical one: While the former president remains in legal jeopardy, the timeline for an actual verdict in the case has almost certainly been extended beyond November’s election. The district court will now take some days—or weeks—to deliberate on the question of whether the alleged conduct is official or private. Once the court has ruled, Trump will have an opportunity to appeal yet again, which itself could take weeks or longer.

Plus, the former president is already trying to use the ruling to overturn his [34-count conviction](#) in May in New York City. Trump’s lawyers [reportedly plan to argue](#) that

the jury in that case heard evidence that should have been privileged under this new standard of presidential immunity.

There's only one person for whom the Supreme Court's ruling is even more immediately relevant: President Joe Biden. "With today's Supreme Court decision, once again it will depend on the character of the men and women who hold that presidency that are going to define the limits of the power of the presidency because the law will no longer do it," Biden said in a [brief evening address](#) at the White House on Monday. "I know I will respect the limits of the presidential powers I've had for three-and-a-half years, but any president, including Donald Trump, will now be free to ignore the law."

Biden concluded by noting that he concurred with Justice Sonia Sotomayor's dissent in the case, and indeed, her opinion painted a bleak picture of a brave new world under the majority ruling. "The President of the United States is the most powerful person in the country, and possibly the world," Sotomayor wrote. "When he uses his official powers in any way, under the majority's reasoning, he now will be insulated from criminal prosecution. Orders the Navy's Seal Team 6 to assassinate a political rival? Immune. Organizes a military coup to hold onto power? Immune. Takes a bribe in exchange for a pardon? Immune. Immune, immune, immune."

Roberts criticized the dissent's "tone of chilling doom" as "fearmongering on the basis of extreme hypotheticals," arguing Sotomayor ignores "the more likely prospect" of presidents prosecuting their successors and future leaders of the free world unable to carry out their duties.

But Trump's presidency and his current candidacy lend credence to both the majority and the dissent's nightmare scenarios. He tried to violently overthrow an election the last time around and is now threatening to prosecute his political opponents this time around. As Mike and Sarah noted in [yesterday's Collision](#):

In the end, perhaps this is the real debate. Which prospect is scarier: an unaccountable president breaking the law with impunity or former presidents routinely being convicted of failing to secure the border or protect the environment after leaving office? What types of people would run for president if they thought they'd likely be prosecuted upon leaving? Then again, we have no history of that kind of abuse, and yet the most recent president did in fact try to stay in power after losing a free and fair election.

The question of which future is more frightening—and whether Trump's prosecution will continue, since at least in this case it will not be concluded before the election—now lies with voters. "If President Biden wins, then the case will continue," Malor told TMD. "If President Trump wins the election, then this case is finished."