



LLOYD TEVIS
INVESTMENTS, LLC

Securing your future through Precision Investing™



Market Commentary
December 2023



The Wars

The Russo-Ukraine war grinds on, for the present much impeded by rainy/sleety weather. The limited successes of the Ukraine's summer offensive is we think a partial defeat in significant measure chargeable to President Biden. The US has been very cautious in ramping up the provision of military kit to the Ukrainians. This caution we think stems directly from the President, who seems to believe that the Russian frog can safely be cooked by gradually raising the temperature of the water in which it sits, while an abrupt increase could provoke a dangerous response. We understand the caution, but wars are won by showing the enemy first and foremost that you intend to win. A policy conditioned on fears of consequences may end up bleeding out ones allies. We have long pointed out that the NATO military kit is predicated on substantial well integrated airpower which has long been denied to the Ukrainians. Nominally that deficit is being addressed by now training up squadrons of F-16 strike fighters. We remain concerned, however, that the full capability of the air wing will be compromised by limiting the weapon packages provided. Adequate airpower would raise the effectiveness of the Ukraine's total kit and would likely transform the battle field.

Israel has made more rapid progress against Hamas than expected. They have split Gaza in two and are concentrating on Gaza City in the northern half. Here they have taken about half the city, although clearing the occupied sections of enemy fighters is an ongoing process. Fighting has been intense with about half the buildings destroyed and the city depopulated. At a guess 2%-5% of Hamas fighters have been killed and perhaps 6%-15% are casualties at some level. The ability of military forces to absorb casualties and continue

fighting is very variable. Famously, the ANZACS at Gallipoli returned wounded men to the line and so endured a casualty rate in excess of 100%. But they were still taken off the beach in good order. Cornered troops may fight to the last man and in World War II the Japanese routinely launched suicide attacks which sacrificed entire units. But these were exceptional cases. Most units collapse once the casualty rate approaches 20%. It is likely that the one week pause in fighting for hostage exchange came when it did because Hamas was badly in need of a rest to regroup.

World opinion is mostly siding with the Gazans. Some portions of world opinion (notably the Chinese) have failed to condemn Hamas. Hamas for its part is boasting of its atrocities and posting graphic photos of its rapes and murders on its fund raising websites. This is perhaps the first time genocide has been made a crowd funding exercise. It is a distinct contrast from Hitler who kept his genocides mostly out of sight. Even Pol Pot only boasted of his crimes to a select audience. Hamas is truly testing new frontiers. The US has been giving Israel a political/military umbrella under which to operate, but it is growing increasingly eager to placate world opinion with humanitarian gestures. Iran continues trying to foment a multi-front war against the Israel and the US. So far its success is quite limited. Iran is also careful to not directly provoke Israel or the US – both of whom are likely itching for an excuse to attack Iran's nuclear facilities. Reportedly, Saudi Arabia has offered Iran a payment to call off its proxies. In the Middle East war is a matter of business.



American Politics

The Colorado District Court in Denver has ruled in a case which sought to exclude Former President Trump from the 2024 primary ballot based on the Fourteenth Amendment to the US Constitution. This Amendment in its third clause excludes from government office certain persons who who

engaged in insurrection subsequent to taking an oath of office to support the Constitution. The Court found by clear and convincing evidence that Trump had engaged in insurrection within the meaning of the amendment. However, the Court ruled that, as a matter of law, the amendment did not apply to the office of President nor to President Trump personally as he had held no other office under the Constitution. The Court's decision provides an indication that Trump is likely to be convicted in the insurrection case being brought against him by the Special Counsel. The Court's reading of the Constitution is currently being appealed to the Colorado Supreme Court. For a detailed analysis see the appendix to this commentary.

On the campaign trail Trump has been laying out his policies for a second term

1. He will establish concentration camps, arrest illegal residents of the United States and deport them en masse.
2. He will charge the Justice department with indicting political opponents.
3. He will terminate civil service protections for broad swaths of the Federal bureaucracy and instead staff the positions with political appointees.

In his rhetoric Trump has described illegal immigrants as “poisoning the blood of our country.” It is reasonable to describe the proposed policies as fascistic and the rhetoric has a neo-nazi ring to our ear. As a matter of simple economics the proposal to deport approximately 10% of the labor force at a time of full employment is the sure way to crash the economy. Certain conservatives, notably the new Speaker of the House, Mike Johnson, feel that the structural reform required is a ban on contraception. We cannot see how a policy that acts with a twenty year delay could be seen as a solution to the labor shortage that would result from mass deportations.

It is notable that the illegal immigrants of primary concern to Trump are Latin Americans. Racially this group is of mixed European and New World heritage, while culturally it is European in education and generally practicing Christians (mostly Roman Catholic) in faith. Even by the weird

categories of American racism it is hard to understand how this demographic is so distinguishable from the current citizenry of the country as to constitute a threat to the purity of American blood.

We think the resolution of this puzzle is that Trump is addressing himself primarily to Anglo-Saxon Protestant bigots who continue their centuries old hostility to Catholics and European continentals albeit now in more coded language.

We find it an important political indicator that the front runner for the Republican nomination to the Presidency is an insurrectionist with fascist policies that would result in economic disaster. On the merits such a party would have at best a marginal place in a democracy. The current Republican party is floating on historic tribal loyalties backed up by considerable state level gerrymandering. As trust continues to be abused, loyalty will gradually melt away. Correction of the gerrymandering is, however, an increasingly urgent issue of structural reform.

Biden's polling strength is plummeting – mostly as a result of weak numbers with the younger and more progressive cohorts. It is too soon to say whether this is a true defection or just the progressive wing flexing its muscles in a run up to an internal battle over the party platform. The contrast between Biden and Trump is stronger now than in 2020 and it is difficult to imagine any cross over vote for either candidate. With the country close to balance the election could turn on who has the better “get out the vote” ground operation. Trump notably flubbed this operation in 2020 but presumably has learned his lesson and will try harder. Both parties look to specific components of their coalitions to man such efforts. The Republicans lean heavily on Christian evangelicals, while Democrats look to African-American community organizations, students and unions. These different segments can be expected to draw increasing attention from party leaders as the election approaches.



International Politics

The annual conference of the Asia Pacific Economic Cooperation (APEC) group was held in San Francisco. The group consists of 21 nations interested in Pacific basin trade. As the name indicates, the mission of APEC is to smooth trading relations among its parties.

Presidents Biden and Xi met in the wings of the APEC conference. Biden would prefer China to throw him no curve balls as he campaigns for re-election. Xi would prefer American politicians to not indulge in an orgy of China bashing as they seek office. We assume the two presidents understood each others desire to keep things cool in 2024.

The APEC conference closed with the usual pious declarations of the member states that they would collaborate on policy harmonization. Notably the joint communique mentioned the importance of a rules based international order. China has been outspoken in criticizing the “rules based international order” which it chooses to see as a velvet glove around US hegemony. Accordingly, the communique was something of a rebuff from the Asian and Pacific states. China's vision – which sounds unpleasantly similar to the little lamented Japanese Co-Prosperity Sphere – did not gain much traction with the APEC attendees.



The US Economy

A consensus has formed that inflation is trending lower and interest rates have plateaued. Some influential voices continue to warn, however, that inflation could resurge driving rates higher and triggering a recession. However, that

is just one of several scenarios deemed credible over the coming months. Muddling along as we are or inflation being sufficiently subdued to permit some rate easing are also scenarios which have to be considered.

The Supreme Court has taken a case which reviews the status of SEC administrative law judges. This regulatory regime has undoubted features of a star chamber proceeding. On the other hand, financiers accused of defrauding the public may well prefer such proceedings to taking their chances with judge and jury. We think little harm would be done to regulation by allowing the accused to choose between a jury and an administrative law judge as a trier of fact. This choice would be similar to the choice between jury and bench trial often offered in civil cases. It will be interesting to see if the Court approaches the case narrowly as a matter of financial regulation, or if it uses the case to rollback regulatory power in general.



The International Economy

In absolute terms China is returning the strongest figures with GDP growth of 5%, stable prices and a positive current account balance. However, by historical norms, these figures represent a growth recession. Unemployment at 5% is above norm and heavily concentrated in the young who are dispirited and lacking confidence in the system. The real estate sector is badly overbuilt and many firms face collapsing finances. Local governments are mired in the same mess. Abrupt disappearances of high party officials and business executives suggest corruption is a continuing problem behind the scenes.

The EU has stable GDP, moderating inflation and unemployment at 6.5%. Its current account balance is positive, its budget is near balance and its government bond rates are normal at 2.6%. As inflation normalizes it should be able to resume growth and contract unemployment.

The UK has slightly better growth than the EU (+0.6%) with less unemployment (4.3%), but its government budget and current account balance are both unhealthy. The UK gave up its preferential trading position in the EU on the hypothesis it could do better trading with the world. This thesis still needs to be proved.

Japan is slowly growing (+1.2%) with characteristically low unemployment (2.6%) and typical inflation (3%). Its government budget is chronically weak however.

Australia is turning in good growth for the developed world (+2.1%) with modest unemployment (3.7%) and solid current account and government budget balances. Its weak point is inflation at 5.4% which holds government bond rates up at 4.5%.

India is growing strongly (+7.8%) with moderately high unemployment (8.1%), moderate inflation (4.9%), high government bond rates (7.2%), and substantial current account and government budget deficits. We think India will continue to capitalize on its growth opportunity and financing this growth will continue the pressure on the other indicia of economic health.

Emerging markets generally are exhibiting mid-levels of growth and, outside of perennially troubled countries, most seem stable.

Overall the global economy is doing pretty well. There is some slack in the system but no pressing crises.



Capital Markets

Last month closed with most markets testing the bottom of their trading ranges as fear gripped investors of further Fed tightening. However, in early November consensus formed

that the tightening cycle has plateaued. Markets responded briskly. Except for oil, all markets rose to exceed the midpoint of their trading range.

Table 1: Recent Market Performance

Category	Asset Class	6 month trend	3 month return	1 month return
Equity	US Large Cap	rising	1.86%	9.78%
	US Large Cap Growth	rising	0.91%	9.12%
	US Large Cap Value	rising	2.97%	10.51%
	Growth – Value	rising	-2.06%	-1.39%
	US Mid/Small Cap	range trading	-0.10%	12.30%
	Intl Developed	range trading	2.31%	9.37%
	Intl Emerging	range trading	1.43%	8.29%
Fixed Income	3-7 Year Treasury	range trading	0.51%	2.82%
	7-10 Year Treasury	range trading	-0.80%	4.99%
	TIPS	range trading	-0.57%	2.60%
	Muni	range trading	1.33%	5.77%
	Investment Grade	range trading	0.03%	4.89%
	Medium Grade	range trading	0.94%	4.67%
	Preferred	range trading	0.23%	7.84%
Commodity	REIT	range trading	2.77%	14.78%
	Euro	range trading	1.00%	2.96%
	Gold	range trading	6.38%	4.93%
	Oil	range trading	-13.56%	-10.24%

Large cap equities, both US and EAFE, are setting new six month highs. Secondary equities (US mid/small cap and emerging market) are well above midpoints of their trading range but not yet at new high levels. Consistent with the view that rates have made their top for this cycle, we are moving the trend on bond asset classes from “falling” to “range trading.” We expect them to range trade until a Fed loosening cycle is imminent, at which point the trend will switch to rising. Oil is currently testing the lower end of its trading range. We think economic slowdown in China represents a particular challenge for oil at this juncture.

Relative strength among US equities was in Mid/Small cap (+12.3%) and Value (+10.51%.) Growth was not far behind, however, at +9.12%. It is classic for weaker sectors to outperform at market turning points as investors go bargain hunting. In Fixed Incomes, the best returns were in the riskier sectors: preferred (+7.84%), medium grade corporates (+4.67%) and investment grade corporates (+4.89%), mid-term Treasuries (+4.99%) and municipals

(+5.77%.) The less risky short Treasuries (+2.82%) and TIPS (+2.60%) also participated in the rally but with less energy. REITs had a stand-out month at +14.78%. We suspect that sigh of relief was shared by managers of banks heavily exposed to commercial real estate. Gold continued recent strength at +4.93% as international politics continues unsettled. The Euro (+2.96%) continues its recovery from the slump triggered by the Russo-Ukraine war.



Advice

It is a classic pattern for the Fed to tighten in the year before a presidential election and to start easing in election year. The president's popularity often is the mirror image of rates – it falls as the Fed tightens and rises as the Fed loosens. There is no reason to think we are not observing the classic pattern at present. Of course, each cycle has its distinctive features and each incumbent president's popularity is more or less tied to the state of the economy.

Despite turbulence and cross-currents, capital markets strike us as fundamentally normal at present. We advise investors to stick to their normal portfolio allocations.



Appendix: Denver Court Opinion

The case was brought by three private citizens (“Petitioners”) seeking an order to the Secretary of State to exclude Trump from the ballot. Although not directly party to the suit, Trump was permitted to join the suit as an interested party.

The court as a trier of first instance made a number of determinations of fact:

1. The report of the January 6 Committee of Congress was admissible evidence. Trump's claim that the Committee's work was tainted by political animus was rejected and Trump's failure to offer rebuttal testimony to the findings of the Committee was noted.

2. The court found the eyewitnesses and expert witnesses called by Petitioners to be of high quality – credible, providing pertinent information and in the case of experts providing relevant expertise. The court found the eyewitnesses called by Trump to be of low quality – either not credible, or providing irrelevant information or providing information of secondary importance. The court found Trump's constitutional law expert to be a more substantive witness, although not possessing the same level of expertise as the Petitioner's constitutional law expert.

3. The court found that over years of practice Trump has developed an oratorical language which is understood by fringe groups of supporters as calls to violent action while to a general audience the language retains a plausible deniability as to its being a call for violence. The court found that Trump knew his use of this coded language would lead to action by these fringe groups.

4. The court found that Trump began manufacturing the lie of a stolen election as early as August 2020 (more than three months before the election.) After the election, Trump began immediately pushing the lie in a very energetic way. The court found that Trump knew the claim that the election was stolen was false but that he deliberately inflamed the opinion of his supporters that they were being robbed of their electoral victory.

5. The court found that Trump knew he had lost the electoral vote and that he knew the Vice President had no legal authority to overturn electoral votes but he nevertheless pressured Vice President Pence to do so with the aims of derailing the lawful procedure of completing a Presidential election and ultimately of securing a second term to himself.

6. The court found that Trump convened an assembly of angry supporters at the Ellipse on January 6 many of whom came prepared for violence and were known by Trump to be so prepared. The court noted that Trump did not inform law

enforcement that he would be calling for a march on Congress and that Trump's speech as delivered departed significantly from his prepared speech in the teleprompter. For instance the Vice President was named once in the prepared speech and eleven times in the delivered speech. The Court found that delivered speech and conduct intentionally incited imminent lawless violence and were the factual cause and a significant contributing factor to the assault on Congress. The Court found that Trump materially aided the assault on the Capitol. The Court found that the purpose of the attack was to disturb the certification of the election which Congress was engaged in on January 6th. The Court found that Trump further incited imminent lawless violence by calling out Vice President Pence for failing to take actions desired by Trump with respect to the election (namely to depart from the lawful process for the conduct of the certification.) The Court found that Trump recklessly endangered the lives of law enforcement, members of Congress and its presiding officers Vice President Pence and Speaker Pelosi by failing to call for reinforcements of law enforcement and by not condemning the attack in his ongoing tweets during the attack.

7. At 4.17 Trump issued a video calling on the mob to go home. The Court found that this video endorsed the action of mob in attempting to halt the transfer of power from Trump to Biden. At 6.01 Trump issued a tweet calling the mob patriots. The Court found this tweet was intended to justify the violence which had occurred. The Court found that Trump shared the mob's purpose in intending to disrupt the election.

8. The Court held that the burden of proof in excluding Trump from the ballot was preponderance of the evidence, but that Petitioner's had met the higher standard of clear and convincing evidence.

9. The Court found that the meaning of insurrection as used in the fourteenth amendment of the US Constitution is the public use of force or threat of force by a group of people to hinder or prevent the execution of the Constitution of the United States. The Court found that the events of January 6 easily met the definition of insurrection.

10. The fourteenth amendment disqualifies from office certain persons who have engaged in insurrection. The Court found that Trump had engaged in insurrection within the meaning of the term 'engage' as used in the amendment. Specifically the Court found that Trump's incitement of the attack constituted engagement but that his dereliction of duty in not sending reinforcements of law enforcement to the Capitol did not constitute engagement. The court did hold that failure to send reinforcements, failure to condemn the attack and his delay in urging the mob to withdraw did speak to his intent. The Court might have found that Trump's inactions to have constituted giving aid and comfort to the insurrectionists, but Petitioners had not sought that finding and the Court only discussed it without making a finding.

11. The Court addressed the issue of whether the First Amendment to the Constitution protected Trump's January 6 speech as lawful political discourse. The Court applied tests from Brandenburg that speech is not protected when it intentionally incites imminent violence in a context where violence is likely to be produced. The court found the criteria of Brandenburg to be met by the January 6 speech and it rejected the claim that the speech was protected by the First Amendment.

It also noted that the First Amendment only protects speech and not conduct.

To summarize, the Court found by clear and convincing evidence that Trump engaged in insurrection with the purpose of retaining presidential power to himself despite knowing that he had lost the Presidential election.

The Court next addressed a question of law, namely how the Fourteenth Amendment would apply in a situation where Trump seeks admission to the presidential ballot. The Amendment disqualifies from certain offices certain persons, who - previously having taken an oath to support the Constitution - thereafter engaged in insurrection. This test raises three legal questions:

1. is Trump in the category of persons potentially subject to exclusion
2. Had Trump taken the oath

3. Is the presidential office a position to which the disqualification test applies

The Court's analysis was in the negative on all three points and so it ordered the Secretary of State to place Trump's name on the ballot. We review each point in turn.

The text of the Amendment which defines the category of persons potentially subject to disqualification is

“a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State”

Here the president is not explicitly named and so the question becomes whether the president is included under the term “an officer of the United States.” The argument for including the president is that the intent of the Amendment is to broadly include responsible persons in both State and Federal government, that State officials are explicitly named as executive officers and so by easy inference the president is the chief executive officer of the Federal government and thus included under the term “an officer of the United States.” Historical practice indeed shows that the president and cabinet were routinely referred to as civil officers of the United States.

Besides belonging to the referenced category, to be subject to disqualification, a person must have – prior to engaging in insurrection – taken an oath “to support the Constitution of the United States” in the capacity of conducting the office which subjects the person to potential disqualification. Factually the only office under the United States under which Trump served and took an oath is the office of the Presidency. The question then is whether the Presidential oath meets to the test of being an oath to support the Constitution of the United States. The Presidential oath, as prescribed by the Constitution (art II sec 1 cl 8) is

“I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States.”

The word support does not explicitly appear in this oath but it might be understood to be implied by the words “preserve,

protect and defend” which could be taken as a more granular expression of the general concept of supporting.

The obvious purpose of the Amendment is to disqualify former officials whose engagement in insurrection has broken their previous oath of office. The apparent reasoning being that if they broke their oath once they cannot make a good the oath again and so disqualification must result.

The offices from which oath breakers are excluded are

a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State

Again we have a very broad designation of offices which does not explicitly name the President or Vice-President. By modern thinking these offices are the most senior elected offices and so one would expect to find them listed ahead of Senators. But by historic thinking the distinction was between legislative and administrative offices. The legislative offices, being few in number, are explicitly listed, whereas the administrative offices, being numerous, are instead described by the term “any office, civil or military, under the United States. By this thinking, the President and Vice President as the most senior civil officers under the United States are clearly covered by this term. There is also the point of logic that it would be odd to disqualify one from the office of elector while permitting one to be a candidate for the higher office for which electors cast their vote.

Taken altogether then the question is whether the language of the amendment is carefully excluding the Presidency from the operation of the disqualification clause or whether the plain intent of the amendment is to include the Presidency and it is not explicitly named simply because its inclusion is so evident. One argument is that if exclusion were intended it should be made explicitly. Another argument is that disqualification from the Presidency is so important that it should be unambiguous.

The District Court adopted the position that the disqualification should be unambiguous. We think that the District Court was mindful of its role in the judicial process. Normally District Courts make determinations of fact and

follow the direction of higher courts with respect to interpretation of constitutional law. Here the District Court took great care with its determinations of fact. On questions of law it took the conservative approach and left its work for review by higher Courts.

Petitioners have lost little time in appealing the decision to the Colorado Supreme Court. That Court could well agree with Petitioners that the historically valid legally coherent reading of the Amendment is to see the presidency included under the term an officer of the United States. An appeal to the US Supreme Court would likely then follow. One expects that Court might ultimately rule for including Trump on the reasoning that this is a political question best left to the electorate. But then Constitutions exist to settle political questions which are judged too important to leave to the volatile mind of the electorate. It will be interesting to see how the Courts handle this matter.

Cover Photo

The District Court in Denver is collocated with several other courts in the Lindsey-Flanigan Courthouse. This building is a thoroughly modern structure completed in 2010. It features two 'green' roofs, efficient lighting systems, natural ventilation of the atrium, water-use reduction and collection of recyclables. The building offers bicycle storage and easy access to public transportation. The building itself was constructed by partial reuse of materials from the structure previously on the site. The architects intend the glass curtain wall to symbolize the transparency of justice and (from the inside) the integration of courts to the wider community. Located in the government center, the asymmetric design is intended to harmonize with surrounding structures.