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# Evolutionary, not revolutionary: Thoughts on a potential second Trump term

Blog by Erin Caddell, President, GC USA, 29 February 2024

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The questions come in from across the country and around the globe: “Are you going to blow up the world?” “Trump can’t serve a third term... can he?!” “Is the Inflation Reduction Act toast?” And, perhaps the most thought-provoking: “If Trump wins a second term, would you recommend global investors underweight the US due to the political volatility likely to result?”

As former US president Donald Trump hurtles toward the Republican presidential nomination in recent weeks - taking another step forward with a decisive win in the South Carolina primary on February 24th over his lone remaining rival Nikki Haley, a former governor of the state - Global Counsel’s corporate and investor clients, and surely much of the US and the world, are grappling with what it would mean should Trump should go on to defeat incumbent President Joe Biden on November 5th.

A number of credible observers have hypothesized that a second Trump presidency would represent the end of American democracy as we know it. Certainly the former president’s incendiary remarks on the campaign trail, in which he has pledged to weaponize the Department of Justice against his perceived political enemies, embraced the January 6th, 2021 insurrection and his role in inciting it, and encouraged Russia to attack NATO allies that fall short of their defense commitments to the alliance, could lead one to conclude that that Trump 2.0 would lead the US down a path toward authoritarianism.

Yet our research and outreach with our contacts in Washington, DC, as we help our clients prepare for a possible second Trump term, buttressed by our experience as US public-policy analysts following the last three presidential administrations - including Trump’s - lead us to a different conclusion. One key principle that emerges from our more than twelve years of policy analysis is that the worst-case scenario is very rarely the one that plays out (unfortunately, the best case is pretty rare, too), as the pressures from many corners diminish the range of motion of even the most ambitious of policymakers. Here, time, Congress and the courts would all act as checks on Trump’s desired approach should he return to the West Wing. And the separation of powers that has helped the US navigate many challenges, internal and external, over our nearly 250 years as a nation will remain. **Ultimately, we think Trump 2.0 would look more like the first term than either Trump and his giddiest MAGA supporters, or his sky-is-falling detractors, would care to admit.**

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✉ [info@global-counsel.com](mailto:info@global-counsel.com)

🌐 [www.global-counsel.com](http://www.global-counsel.com)



We make the following points to support this view:

- **Trump would be a one-term president.** The 22nd Amendment to the US Constitution states, with wonderful simplicity, that “[n]o person shall be elected to the office of the President more than twice.” The amendment was passed by Congress in 1947 in the wake of Franklin Delano Roosevelt’s death two years earlier amidst his fourth term as president. FDR was elected in 1932 in the throes of the Great Depression, and re-elected in 1936. In 1940, as World War II engulfed the globe and threatened to draw in the US, FDR suspended what at that point had been a convention famously dating back to George Washington’s decision not to seek a third presidential term to avoid a disruption of leadership amidst a national crisis.
- FDR ran for and was elected to a fourth term as the war raged in 1944. But his death in office the following year led to a bout of soul-searching as Americans considered the circumstances under which a presidency could come to approximate the monarchy Americans had fought a revolution to avoid (and provided an opening for FDR’s long- frustrated opponents). FDR’s successor, Harry Truman, recommended presidential term limits as part of a series of post-war reforms of the federal government submitted to Congress. The amendment was ratified by 41 of the 48 states (Alaska and Hawaii were not US states at the time), five above the three-quarters majority required. Two states rejected the amendment, while five declined to act. US law specifies that an affirmative two-thirds vote by both houses of Congress, or the same number of state legislatures, is required to overturn a constitutional amendment. Such a vote has only occurred once in US history, to end Prohibition in 1933. Trump won 30 states in the 2016 election, or 60% and 25 in 2020. Democrats have a one-seat majority in the Senate, while Republicans hold a two-seat margin in the House. **In sum, the likelihood of Trump and his supporters being able to overturn the Constitution to remain in office for a third term is extremely low.**
- What are the policy implications of this dynamic? It means that Trump, like every second-term US president before him, will have to balance the goals for his second term with his succession. This is, of course, tricky as most things are with analyzing Trump. Would Trump’s ego really be able to allow him to endorse anyone to be the Republican nominee in 2028, either his own vice president, one of his own children, or someone else? Or would Trump prefer a free-for-all nomination process, with many candidates vying to sing his praises? Will Trump want the MAGA movement to be one that continues as a force in American politics after he fades from the scene? Or does he wish it to begin and end with him? Either way, such questions will take time and attention away from policy action, particularly after the 2026 midterms.
- **Congress would be a moderating force...** Congress was a boon to Trump’s ability to move his agenda forward in his first term, particularly its first half. Trump entered 2017 with a four-seat Republican majority in the Senate and a 47-seat margin in the 435-member House, providing a cushion to lose more than 20 Republicans and still pass a vote. Trump maintained



productive, if transactional relationships with Senate Majority Leader Mitch McConnell and House Speaker Paul Ryan. Together Trump and his Republican allies in Congress passed the Tax Cuts and Jobs Act (TCJA) tax package in 2017 via reconciliation (a legislative maneuver that allows budget-related bills to pass with simple majorities in both houses) and confirmed numerous judges to the federal bench, in addition to other legislative achievements. Though Republicans lost 40 seats in the 2018 midterms, ceding the majority back to the Democrats, the GOP retained control of the Senate, allowing Trump to continue to appoint judges (the Senate has exclusive confirmation authority for the judicial branch), including Supreme Court Justice Amy Coney Barrett on the eve of the 2020 elections, and to limit Democrat opposition in the second half of Trump's first term.

- **Congress would almost certainly be less accommodating to Trump in a second term than it was in his first.** Though Democrats face poor odds in defending their one-seat Senate majority, defending 24 seats in the upcoming 2024 elections to Republicans' 11, respected forecasters 270towin.com suggest that the best-case scenario is that Republicans can win a three-seat Senate majority if all the toss-up elections go their way. Similarly, 270towin currently forecasts the same three-vote majority for Republicans in the House, but with about 5% of the races in the chamber too close to call. Even if Republicans do retake the Senate while holding the House, the fractured GOP House caucus that felled prior Speaker Kevin McCarthy, and threatens at times to do the same to current Speaker Mike Johnson, would not magically go away if Trump returned as president. And Congress would not cede its power to appropriate funds, confirm presidential appointees or oversee agency action just because a number of its Members are enthralled by or fear Trump. Importantly, Trump's relationship with McConnell, now Senate Minority Leader, is far more fractured than during Trump's first term, after McConnell criticized Trump for his role in January 6th (though McConnell declined to vote to impeach him for it) and McConnell's wife, Elaine Chao, resigned as Trump's Secretary of Transportation following the attack on the Capitol.
- Many debates in Congress under Trump 2.0 would be just as complex as those that have taken place in the chambers since the dawn of the Republic. Take the Inflation Reduction Act (IRA). The signature achievement of Biden's first term, the bill has become a lightning rod for criticism by Republicans who argue it is a giveaway to the renewable energy industry, and another example of big government and big spending run amok. Yet independent analysts suggest the large majority of spending and tax credits allocated under the IRA are benefiting Republican-leaning states, in part due to provisions in the bill that provide higher tax credits for renewables projects located in regions that have historically produced fossil fuels. In addition, the IRA also contained provisions that lowered drug prices for consumers, an initiative popular among Republicans as well as Democrats, and one that provided deficit-reduction measures by lowering required Medicare drug reimbursement. Thus an outright repeal of the IRA seems unlikely even under Republican control of the executive and



legislative branch. And even a partial repeal could lead to a debate within the GOP about how much of the bill's benefits to withdraw from their own constituents.

- ... **as would the courts.** Much has been made by pundits of the fact that Trump would bring to a second term all the learnings of his first. Gone would be his inclination to hire Washington insiders who only served to undermine Trump's goals, the thinking goes. But the flip side of this is that the lawyers, legal scholars and others who led efforts to oppose Trump's actions during his first term, in areas from the environment to immigration to labor relations, learned lessons from those years as well. And given that Trump 1.0 ended just over three years ago, many of these activists are still around.
- Clearly, should Trump return to the White House, he would face a judicial environment highly sensitized to attempt to block or slow his actions and those of his administration. Taking a page from Trump and McConnell's playbook, Biden and Senate Majority Leader Chuck Schumer have secured appointments of 171 federal judges thus far in Biden's first term, compared to 229 in the four years of Trump's first term. Biden appointees now represent more than 20% of all federal judges; Biden has nominated an additional 32 judges awaiting confirmation hearings. While the US Supreme Court now has a solid 6-3 conservative majority, with three Justices nominated by Trump, the high court did not act as a rubber stamp for the former president, declining to hear, for instance, cases challenging the results of the 2020 election. A landmark case released in 2022, *West Virginia v. EPA*, and a similar appeal being heard in the current session will almost certainly further limit federal agencies' authority to interpret statute as laid out by Congress, what is known as Chevron deference. These cases are the result of years of effort by conservative legal advocates hoping to rein in what they view as an out-of-control administrative state dominated by big-government advocates. But the weakening of Chevron deference can be used by liberals as well as conservatives. The recent High Court cases limiting federal agencies' authority to interpret Congressional intent could be used to challenge, say, an aggressive Trump policy to manage migrants at the US-Mexico border, or another rejecting a specified Congressional appropriation that Trump does not wish to carry out.

All this is not to diminish the fact that a Trump presidency would represent a significant ideological shift from Biden. Many domestic industries would benefit from the deregulatory stance that marked Trump's first term, as pro-industry regulators would be installed to head up agencies overseeing energy, financial services and antitrust policy, among others. And a second Trump term would represent a clear step back from US presence on the world stage, as Trump and his Republican allies would take a much harder line on international commitments and alliances, while potentially further ratcheting up tariffs on exports. However, in many cases a second Trump term would accelerate policy trends already in motion. Republican consensus to pull back on further military aid to Ukraine goes well beyond Trump; the tariffs Trump imposed on many Chinese imports have been retained by Biden. And so on. It sounds almost heretical to say to Trump's fans as well as his



detractors, but Trump 2.0 would be more like previous US presidents' second terms than not at least in terms of policy, if not in tone.