

EDITOR IN CHIEF'S PAGE

September 21st, two days before the official end of summer, was also the date the Detroit Tigers were officially eliminated from playoff contention. Their elimination was never really in doubt, as they had hovered all season below .500 – avoiding elimination only because of the weak nature of the American League's Central Division. But their elimination also ensured that during calendar year 2023, like the three prior years,¹ neither the Tigers, Redwings, Lions nor Pistons would participate in, much less win, a playoff game.²

This prolonged period of futility has not kept me from spending inordinate amounts of time following them in the Detroit Free Press or on TV. But it may well have heightened my desire to focus my reading on more than stories about the Pistons' prospects, Miguel Cabrera's retirement, or developments in energy law. And it may account for my self-imposed decision to chronicle some of the significant events of the six months since our last edition of the Journal as part of the badly misnamed Editor-in-Chief's *Page*. With that explanation, my semi-annual recap follows.

Energy Policy Developments

- **FERC Order No. 2023 – Interconnection Reform**

On July 28th, Federal Energy Regulatory Commission (FERC) issued its long anticipated rule on interconnection reform, Order No. 2023.³ The rule requires all public utilities to file revised pro forma interconnection procedures and agreements consistent with the new rule. The rule's goal, as described by the Commission, is to facilitate timely and efficient interconnection and to reduce the backlog of interconnection requests by moving to a first-ready, first-served process, imposing firm deadlines, establishing penalties for transmission providers that do not complete required studies, and requiring would-be interconnecting generators to make financial deposits and establish site control, among other provisions.⁴

- **Fracking for Geothermal**

This past summer, two companies with grants from the Department of Energy, FERVO, and Forge announced successful tests in Utah of fracking technology applied, not to release natural gas from shale formations, but to release heat from hot granite deposits found, well, virtually everywhere on earth. FERVO is already drilling wells to supply a 400 MW geothermal plant. A possible downside

1. While the Pistons made the playoffs in 2019, they were swept in four games. It has been more than seven years since any of the four teams won a single playoff game.

2. It is possible as of the date of this publication – dare I even say likely – that the Detroit Lions will qualify for the playoffs in 2023, but the playoffs for the current NFL season will not start until calendar year 2024.

3. Order No. 2023, *Improvements to Generator Interconnection Procedures and Agreements*, 184 FERC ¶ 61,054 (2023).

4. *Fact Sheet | Improvements to Generator Interconnection Procedures and Agreements*, FERC, <https://www.ferc.gov/news-events/news/fact-sheet-improvements-generator-interconnection-procedures-and-agreements> (last visited Oct. 30, 2023).

of fracking-based geothermal is that fracking can create seismic disturbances.⁵ Still another technology, recounts New York Times reporter Brad Plumer in a fascinating article, “is a ‘closed loop’ system, which involves drilling sealed pipes into hot, dry rocks and then circulating fluid through the pipes, creating a giant radiator.”⁶ This, Plumer reports, “avoids the unpredictability of water flowing through underground rock and doesn’t involve fracking, which is banned in some areas. The disadvantage: more complicated drilling.”⁷ But there’s already a 65 MW “closed loop” system under construction in Germany.⁸ And other geothermal technologies are on the near horizon, too. “The most audacious vision for geothermal, notes Plumer, “is to drill six miles or more underground where temperatures exceed 750 degrees Fahrenheit. At that point, water goes supercritical and can hold five to 10 times as much energy as normal steam.”⁹ But while this technology requires “futuristic tools” suitable in ultra-high temperatures, there are companies investing in this, too. All of these geothermal technologies have the advantage – like nuclear units and battery storage – of providing base load capacity needed to supplement wind and solar energy sources.¹⁰

- **Montana Court Win for Young Climate Activists**

A Montana trial court struck down a section of Montana’s Environmental Policy Act precluding the state from considering climate impacts when evaluating energy project permit applications, finding that the provision was inconsistent with the state constitution’s guarantee of a right to a “clean and healthful environment.”¹¹ The suit was brought by sixteen plaintiffs aged five to twenty-two who based their standing on the contention that “climate change has put their recreation, traditions, mental health and physical health at risk and that the state’s promotion of fossil fuels was a causative factor.”¹² Lawsuits invoking similar language in other state constitutions are pending in four other states.¹³

New COVID Strain – BA.2.86 Variant

Not yet widely spread, the Centers for Disease Control warned of the emergence of a new COVID variant, BA.2.86, with three dozen mutations compared to the next most common COVID strain. “[E]arly data suggest that this strain may be more likely to infect people who have been vaccinated or have had previous infections than previous strains.”¹⁴ But antiviral drugs and vaccines still appear to be effective in preventing serious illness. A new vaccine booster was made available this fall.¹⁵

5. *Id.*

6. Brad Plumer, *There’s a Vast Source of Clean Energy Beneath Our Feet. And a Race to Tap It.*, N.Y. TIMES (Aug. 28, 2023), <https://www.nytimes.com/2023/08/28/climate/geothermal-energy-projects.html>.

7. *Id.*

8. *Id.*

9. *Id.*

10. Plumer, *supra* note 6.

11. Kate Selig, *Youths sued Montana over climate change and won. Here’s why it matters*, WASH. POST (Aug. 16, 2023), <https://www.washingtonpost.com/climate-environment/2023/08/17/montana-climate-lawsuit-impact/>.

12. *Held v. Mont.*, Cause No. CDV-2020-307 (Mont. First Jud. Dist. Ct. Aug. 14, 2023).

13. Selig, *supra* note 11.

14. Alice Park, *Will the New COVID-19 Vaccine Work Against the BA.2.86 Variant?*, TIME (Aug. 25, 2023), <https://time.com/6308418/ba-2-86-covid-19-variant-vaccine/>.

15. Florida governor and presidential aspirant Ron DeSantis, contradicting CDC advice, has urged Florida residents under 65 *not* to take the booster. Florida now reports the highest incident of COVID hospitalizations

Organized Labor Fights Back

- **UPS Strike.** Avoiding the potentially crippling effect of a nationwide strike to the economy, United Parcel Service and the Teamsters, representing 300,000 employers, reached agreement on a contract that will see substantial pay increases for both full time and part time workers and the installation of air conditioning units in new trucks.¹⁶
- **UAW Strike.** In mid-September the United Autoworkers (UAW) began its strike against the three main unionized motor vehicle manufacturers – Ford, Stellantis (formerly Chrysler), and General Motors. Among the biggest issues was the union’s objection to the two-tiered wage structure – a concession made by UAW during the economic downturn in 2007-2008 – that pays newer workers a substantially lower wage than older employees. The simultaneous strike against the “Big Three” was the first in the UAW’s history.¹⁷ President Biden’s decision to join the UAW picket line was also a first for a sitting president.¹⁸ As of this writing the UAW and the three auto companies have reached a tentative settlement.
- **Actors and Writers’ Strikes.** As a long-time fan of the various Star Trek series, I have been awaiting the start of the final season of Star Trek Discovery. I will have to wait longer. The dangers of AI have been a staple of Star Trek episodes. But its impact on the future finances and careers of actors and writers is at the heart of the strikes by the unions representing them, the Writers Guild of America and the Screen Actors Guild.¹⁹ It is one thing to write or act in movies and television shows about artificial intelligence replacing human beings; it is quite another to face the risk that such stories will actually be written and performed by computer programs.
- **Health Care Workers’ Strike.** The largest health care worker strike in U.S. history began on October 4th. Unions representing 75,000 nurses, pharmacists, health technicians, and other health care workers started their three-day strike against Kaiser Permanente. Wages are a key issue, but so too is the burden of understaffing falling on existing employees.²⁰

in the U.S. Arek Sarkissian, *DeSantis delivered Covid booster warning as Florida led the nation in hospitalizations*, POLITICO (Sept. 21, 2023), <https://www.politico.com/news/2023/09/21/desantis-delivered-covid-booster-warning-as-florida-led-the-nation-in-hospitalizations-00117284>.

16. Noam Scheiber, *UPS Employees Approve New Contract, Averting Strike*, N.Y. TIMES (Aug. 22, 2023), <https://www.nytimes.com/2023/08/22/business/economy/ups-contract-vote-teamsters.html>.

17. Nora Eckert & Ryan Felton, *UAW Goes on Strike Against GM, Ford and Stellantis*, WALL ST. J. (Sept. 15, 2023), <https://www.wsj.com/business/autos/uaw-strikes-gm-ford-stellantis-plants-69b04c95>.

18. Christina Wilkie & Spencer Kimball, *Biden will travel to Michigan to ‘join the picket line’ with UAW workers on strike*, CNBC (Sept. 2, 2023), <https://www.cnn.com/2023/09/22/biden-to-travel-to-michigan-to-support-uaw-strikes.html>.

19. Ali Rogin & Andrew Corkery, *Why artificial intelligence is a central dispute in the Hollywood strikes*, PBS (Sept. 2, 2023), <https://www.pbs.org/newshour/show/why-artificial-intelligence-is-a-central-dispute-in-the-hollywood-strikes>. As of the publication date, the writers had reached an agreement with the movie and television studios and the actors had reached a tentative agreement with the studios.

20. Samantha Delouya, *75,000 Kaiser Permanente workers are on strike*, CNN (Oct. 4, 2023), <https://www.cnn.com/business/live-news/kaiser-strike-100423/index.html>.

Supreme Court Developments

Shortly after the last edition of the Journal went online, the Supreme Court handed down several significant opinions involving the major questions doctrine, the independent state legislature theory, the scope of the Voting Rights Act, and the constitutionality of affirmative action programs in college admissions.

The first of these, *Biden v. Nebraska*,²¹ involved successful challenges to the government's student loan forgiveness rule, and was probably of very direct personal interest to EBA members with outstanding student loans. But, as a further application of the expansive "major questions doctrine," it has implications for practice before FERC as well. There, the Court struck down the government's program, concluding that the agency's authority to "modify or waive" student loan obligations did not include the authority to waive those obligations completely when the consequences were so large. Citing its major questions doctrine ruling in *West Virginia v. EPA*, the Court said that such a large waiver would have required "clear congressional authorization."²² Writing in concurrence, Justice Barrett argued that the ruling is not really a big deal, just application of a common sense reading of the law. "[C]lear congressional authorization," she stated, "does not equate to an "'unequivocal declaration' from Congress."²³ But she simultaneously acknowledged that "one could walk away from our major questions cases with this impression."²⁴ The problem with the Justice's rose-colored glasses view of those cases is that while *she* "do[es] not read them this way,"²⁵ the majority of her colleagues on the court apparently do. And so, apparently do at least some lower court judges.²⁶ I have previously written about the uncertainty and instability this standard creates for administrative agencies.²⁷

In *Moore v. Harper*,²⁸ the Supreme Court rejected an argument that the Elections Clause of the U.S. Constitution, which gives to "the Legislature" of each state the authority to set federal election rules, also bars the states' judiciaries from overturning legislatively-set federal election rules even if those rules violated the state's own constitution. The case was prompted by the North Carolina Supreme Court's ruling that the state's legislature had unlawfully gerrymandered congressional district boundaries to favor the state's Republican party. By the time of the Supreme Court's decision, however, the case no longer had practical import in North Carolina. Following the election of a Republican majority on the state's Supreme Court, that court reversed its only months-old prior ruling.²⁹

Ruling that the 14th Amendment's equal protection clause bars colleges from considering race, the Supreme Court reversed its holding in *Grutter v. Bollinger*

21. 143 S. Ct. 2,355 (2023).

22. *Id.* at 2,361.

23. *Id.* at 2,378.

24. *Id.*

25. 143 S. Ct. at 2,378.

26. *See, e.g.,* N.C. Coastal Fisheries Reform Grp. v. Capt. Gaston, LLC, 76 F.4th 291 (4th Cir. Aug. 7, 2023). That case involved a *private* lawsuit claiming that the Clean Water Act barred commercial fishers from throwing "bycatch" – fish the company does not want – back into the water. In rejecting the claim, the Fourth Circuit noted, "that the EPA has never sought the authority to regulate bycatch in the fifty years since the Clean Water Act was passed. Indeed, the EPA does not even seek it now." But then it went on to rule that the Act's interpretation by the private party – not the agency – violates the major question doctrine.

27. Harvey Reiter, *Would FERC's Landmark Decisions Have Survived Review Under the Supreme Court's Expanding "Major Questions Doctrine" And Could The Doctrine Stifle New Regulatory Initiatives?*, 3 EBA BRIEF 1 (2022), https://www.eba-net.org/wp-content/uploads/2023/01/EBA_Brief_V3-1.pdf.

28. 143 S. Ct. 2,065 (2023).

29. *Id.* at 2,070.

that promoting student diversity was a compelling state interest justifying consideration of race in admissions. The Court's ruling in *Students for Fair Admissions, Inc. v. Harvard*,³⁰ invalidating the admissions processes at Harvard and the University of North Carolina, has already had repercussions beyond college admissions as law firms and businesses offering minority scholarships or even diversity training have been the subject of threatened and actual lawsuits.³¹

Finally, *Allen v. Milligan*³² and its aftermath underscored the persistent influence of racial discrimination on voting rights. There, the Supreme Court struck down as a violation of the Voting Rights Act the Alabama legislature's congressional districting map as racially gerrymandered. Instructed to devise new maps, the legislature displayed a recalcitrance reminiscent of George Wallace's stand in front of the schoolhouse door, when he attempted to block two black students from enrolling at the University of Alabama in 1963.³³ Alabama's redrawn, but flagrantly non-compliant maps, were rejected by the federal district court, the 11th Circuit, and finally, the Supreme Court.³⁴

In recent months, the Court has agreed to consider the constitutionality of the longstanding for-cause protections accorded administrative law judges³⁵ as well as whether it should rescind or narrow the *Chevron* doctrine³⁶ or rule unconstitutional administrative agencies that are not funded by annual Congressional appropriations.³⁷ These cases could have a major impact on how FERC operates.³⁸

30. 143 S. Ct. 2,141 (2023).

31. See, e.g., Bryan Mena, *Conservative activist who took down affirmative action is now going after law firms' diversity programs*, CNN (Aug. 23, 2023), <https://www.cnn.com/2023/08/23/economy/lawsuit-law-firms-diversity-fellowships/index.html>; Taylor Telford, *They invest in Black women. A lawsuit claims it's discrimination.*, WASH. POST (Aug. 26, 2023), <https://www.washingtonpost.com/business/2023/08/26/dei-lawsuit-black-businesses-fearless-fund-edward-blum/>; Theo Francis & Lauren Weber, *The Legal Assault on Corporate Diversity Efforts Has Begun*, WALL ST. J. (Aug. 8, 2023), <https://www.wsj.com/articles/diversity-equity-dei-companies-blum-2040b173>.

32. 143 S. Ct. 1,487 (2023)

33. *Governor George Wallace Attempting to Block Integration at the University of Alabama, June 11, 1963*, STATE HIST. SOC'Y IOWA, <https://history.iowa.gov/history/education/educator-resources/primary-sources/school-desegregation/governor-george> (last visited Oct. 30, 2023).

34. *Allen v. Milligan – Aftermath*, WIKIPEDIA, https://en.wikipedia.org/wiki/Allen_v._Milligan (last visited Oct. 30, 2023).

35. *SEC v. Jarkesy*, 803 F.3d 9 (D.C. Cir. 2015) (U.S. granted cert. June 30, 2023) (“[W]hether Congress violated Article II by granting for-cause removal protection to administrative law judges in agencies whose heads enjoy for-cause removal protection.”).

36. *Loper Bright Enters. v. Raimondo*, 45 4th 359 (D.C. Cir. Aug. 12, 2022) (U.S. granted cert May 1, 2023) (“[W]hether the court should overrule *Chevron v. Nat'l Resources Def. Council*, or at least clarify that statutory silence concerning controversial powers expressly, but narrowly granted elsewhere in the statute does not constitute an ambiguity requiring deference to the agency.”).

37. Nina Totenberg, *Supreme Court to consider abortion pills, guns, social media in its new term*, NPR (Sept. 2, 2023), <https://www.npr.org/2023/10/02/1201601347/supreme-court-new-term> (discussing Court's decision to review Fifth Circuit ruling that Consumer Financial Protection Board's funding from fees paid to Federal Reserve Board rather than annual Congressional appropriations was unconstitutional).

38. It is unfortunately behind a paywall, but a Law360 article contains an interesting discussion about the potential impact of upcoming Supreme Court cases on administrative law. See Jeff Overley, *'Administrative State' Attacks Soar To High Court Crescendo*, LAW360 (Sept. 29, 2023), https://www.law360.com/articles/1724574?e_id=19542222-3968-4935-80b4-5987be7a46ed&utm_source=engagement-alerts&utm_medium=email&utm_campaign=case_updates.

Antitrust

My last Editor's Page quoted Senator Klobuchar's wish to "make antitrust sexy again."³⁹ I'm not sure she can take credit for developments already underway at the time of her remark, but antitrust is certainly in the news.

One of the biggest antitrust trials of this century began in a federal district court in DC in mid-September. The thrust of the case is the government's contention that Google has monopoly power in the search engine market and that it has used that dominance to stifle competition from other search engine providers. The case was first brought by then Attorney General Barr during the Trump administration and has been continued by Attorney General Garland during the Biden administration.⁴⁰

Only a couple of weeks later, the Federal Trade Commission, joined by the attorneys general from seventeen states, filed a monopolization case against Google's fellow tech giant, Amazon.⁴¹ "This complaint, said Federal Trade Commission (FTC) Chair Lina Khan, "reflects the cutting edge and best thinking on how competition occurs in digital markets and, similarly, the tactics that Amazon has used to suffocate rivals, deprive them of oxygen, and really leave a stunted landscape in its wake."⁴²

And earlier this summer, Department of Justice's (DOJ's) antitrust division and the FTC jointly released a draft update of the Merger Guidelines.⁴³ While FERC declined to apply the previous update to the Merger Guidelines to its own merger review framework,⁴⁴ if the DOJ/FTC proposed guideline revisions become final, FERC may well be asked to consider whether it too should utilize those guidelines.

Political Corruption Cases

- **Menendez indictment.** New Jersey Senator Bob Menendez, indicted only a few years ago on bribery charges in a case that ended with a hung jury, was indicted on different bribery charges on September 22, 2023. The sensational charges allege that gold bars, wads of cash stuffed in envelopes and in the lining of the Senator's sport coat, as well as a brand new Mercedes-Benz convertible found at his home – collectively worth hundreds of thousands of dollars – were payoffs from co-defendants for his interference in ongoing prosecutions and to secure military funding for Egypt.⁴⁵ At a press conference called shortly after his indictment, the Senator offered

39. *Editor in Chief's Page*, 44 ENERGY L.J. xxii (2023).

40. Dana Kerr, *United States takes on Google in biggest tech monopoly trial of 21st century*, NPR (Sept. 12 2023), <https://www.npr.org/2023/09/12/1198558372/doj-google-monopoly-antitrust-trial-search-engine>.

41. FERC v. Amazon.com, Inc., Case No. 2:23-cv-01495 (W.D. Wash. filed Sept. 26, 2023).

42. Brian Fung, *US government and 17 states sue Amazon in landmark monopoly case*, CNN BUS., (Sept. 26, 2023), <https://www.cnn.com/2023/09/26/tech/ftc-sues-amazon-antitrust-monopoly-case/index.html>. The states joining the FTC are Connecticut, Delaware, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Jersey, New Hampshire, New Mexico, Nevada, New York, Oklahoma, Oregon, Pennsylvania, Rhode Island, and Wisconsin. *Id.*

43. *Merger Guidelines*, US DEPT. JUSTICE & FED. TRADE COMM'N (Draft, for public comment, July 19, 2023), https://www.ftc.gov/system/files/ftc_gov/pdf/p859910draftmergerguidelines2023.pdf.

44. Mark J. Niefer, *Explaining the Divide Between DOJ and FERC on Electric Power Merger Policy*, 32 ENERGY L.J. 505, 506 n.2 (2011) (noting that when DOJ last revised its merger guidelines in 2010, FERC chose to continue to apply DOJ's 1992 merger guidelines).

45. Corky Siemaszko, *Bob Menendez's indictment highlights: Gold bars and wads of cash*, NBC NEWS (Sept. 22, 2023), <https://www.nbcnews.com/politics/justice-department/bob-menendezs-indictment-highlights-gold-bars-wads-cash-rcna116935>.

the dubious explanation that for the last thirty years he'd been taking large amounts of cash from his saving account "for emergency purposes" and because, as the son of Cuban immigrants, he worried about government confiscation of his property.⁴⁶ The latter explanation seemed a little curious. His parents had emigrated from Cuba in the early 1950s,⁴⁷ nearly a decade before Fidel Castro came to power. And his claimed thirty year-long distrust of the safety of his savings in financial institutions (apparently starting in his late thirties, as he is sixty-nine) is also a little difficult to square with his position, until after the indictment, as a member of the Senate's banking committee.⁴⁸

- **Paxton Impeachment.** The Menendez indictment followed only a week after a party-line vote in the Texas Senate rejected the bipartisan impeachment charges – also for bribery and abuse of office – brought by the Texas house against the state's Attorney General, Kenneth Paxton. Immediately after the state Senate vote, the State's Lieutenant Governor, Dan Patrick, who had presided over the trial, decried it as a waste of taxpayer dollars.⁴⁹ These remarks were in stark contrast to the comments of New Jersey's Governor Phil Murphy, who had called for the resignation of his fellow Democrat immediately following the announcement of Menendez's indictment.⁵⁰ Paxton's troubles, however, may not be over. He still faces a trial on securities fraud as well as a federal investigation "on the same allegations of corruption and abuse of office" that were the focus of the impeachment trial.⁵¹
- **George Santos indictment.** The serial fibber, already under federal indictment, was slapped with twenty-three additional political corruption charges, including charges for filing fraudulent fundraising reports with the Federal Election Commission and "repeatedly" charging the credit cards of campaign contributors without their authorization.⁵²

Musk's Twitter (Now X) – The Free Speech Paragon?

A study conducted by the Washington Post found that X, formerly known as Twitter, had been throttling – or slowing down – its users' access to websites that have been critical of X's owner, the self-proclaimed free speech advocate, Elon

46. Daniel Han, *Defiant Menendez doubles down against resignation calls*, POLITICO (Sept. 25, 2023), <https://www.politico.com/news/2023/09/25/defiant-menendez-doubles-down-against-resignation-calls-00117955#:~:text=Defiant%20Menendez%20doubles%20down%20against%20resignation%20calls>.

47. Bob Menendez, WIKIPEDIA, https://en.wikipedia.org/wiki/Bob_Menendez#:~:text=10%20External%20links-,Early%20life,%2C%20Evangelina%2C%20was%20a%20seamstress (last visited Oct. 30, 2023).

48. *Id.*

49. Patrick Svitek, *Dan Patrick, Dade Phelan trade potshots after impeachment trial ends*, TEX. TRIBUNE (Sept. 16, 2023), <https://www.texastribune.org/2023/09/16/ken-paxton-impeachment-dan-patrick/#:~:text=Dan%20Patrick%2C%20Dade%20Phelan%20trade%20potshots%20after%20impeachment%20trial%20ends>.

50. Christina Wilkie & Rebecca Picciotto, *Sen. John Fetterman is first Democratic senator to tell Sen. Bob Menendez to resign after bribery indictment*, CNBC (Sept. 22, 2023), <https://www.cnbc.com/2023/09/22/new-jersey-gov-phil-murphy-calls-on-sen-bob-menendez-to-resign-after-bribery-indictment.html>.

51. Svitek, *supra* note 49.

52. Dept. of Just. Press Release, Congressman George Santos Charged With Conspiracy, Wire Fraud, False Statements, Falsification of Records, Aggravated Identity Theft, and Credit Card Fraud (Oct. 10, 2023), <https://www.justice.gov/usao-edny/pr/congressman-george-santos-charged-conspiracy-wire-fraud-false-statements-0>.

Musk. The affected sites, the Post reported, included the New York Times, Facebook, Instagram, Threads (the last three owned by Musk rival Mark Zuckerberg), Bluesky, and Mastadon.⁵³

Submersible Catastrophe

A widely publicized expedition on the Titan submersible to view the wreckage of the Titanic proved fatal for Stockton Rush, the owner-operator of the vessel, and the Titan's four passengers, a combination of "wealthy tourists and curious scientists."⁵⁴ The fate of the Titan and its passengers, unknown for several days, drew worldwide attention.

Deaths of the Famous and Infamous

- **Tony Bennett.** Winner of twenty Grammy awards in a singing career that spanned eight decades, Tony Bennett passed away at age ninety-six. Probably best known for "I Left My Heart in San Francisco," Bennett was also an accomplished painter who sold his paintings under his given name, Anthony Benedetto. After being diagnosed with Alzheimer's in 2016, he continued to perform, including a last joint concert at Radio City Music Hall in 2021 with Lady Gaga.⁵⁵
- **Diane Feinstein.** Frail, experiencing memory difficulties and missing votes, ninety-year-old Senator Feinstein had vowed in recent months to serve out her term amid calls from some of her colleagues in Congress to step down. But her health problems ultimately took their toll and she passed away on September 28th. Her recent health and cognitive difficulties had overshadowed a remarkable career as the first female mayor of San Francisco, California's first woman senator, and the first woman to chair the Senate's Judiciary and Intelligence committees. An outspoken proponent of gun control and women's rights, she "disappointed liberals with her law-and-order approach toward governance and her long-standing support for the death penalty" while defying President Obama to release the intelligence committee's "torture report" detailing the CIA's use of "waterboarding, sleep deprivation, physical abuse, confinement in a coffin-size box and threats against suspects' families" as interrogation techniques.⁵⁶
- **Frank Howard.** A towering 6'7 and over 250 pounds, he made a thirty-eight ounce bat look like a matchstick. Known affectionately by adoring Washington Senator fans as the "gentle giant," Frank Howard passed away at the age of 87 on October 30th. Howard, who knocked in over 100 runs in ten different seasons, hit some of the longest homeruns in major league history, including one of only

53. Jeremy B. Merrill & Drew Harwell, *Elon Musk's X is throttling traffic to websites he dislikes*, WASH. POST (Aug. 16, 2023), <https://www.washingtonpost.com/technology/2023/08/15/twitter-x-links-delayed/>.

54. John Branch & Christina Goldbaum, *A Rubik's Cube, Thick Socks and Giddy Anticipation: The Last Hours of the Titan*, N.Y. TIMES (July 6, 2023), <https://www.nytimes.com/2023/07/02/us/titan-submersible-passengers.html>.

55. Bill Trott, *Tony Bennet, Legendary American singer, dies at age 96*, REUTERS (July 21, 2023), [https://www.reuters.com/world/us/legendary-american-singer-tony-bennett-dies-age-96-ap-2023-07-21/#:~:text=July%2021%20\(Reuters\)%20%2D%20Tony,Bennett%20was%2096](https://www.reuters.com/world/us/legendary-american-singer-tony-bennett-dies-age-96-ap-2023-07-21/#:~:text=July%2021%20(Reuters)%20%2D%20Tony,Bennett%20was%2096).

56. Emily Langer, *Dianne Feinstein, centrist stalwart of the Senate, dies at 90*, WASH. POST (Oct. 4, 2023), <https://www.washingtonpost.com/obituaries/2023/09/29/dianne-feinstein-california-senator-dead/>.

two homeruns to clear the left field roof at Detroit's Tiger Stadium. He enjoyed his greatest success as a Dodger and Senator, but finished his playing career winning the American League Eastern Division title with the Tigers in 1972 and then sharing DH duties with Gates Brown in 1973, the first year of the designated hitter.

- **Ted Kaczynski.** Held for decades in a “supermax” prison in Colorado for the sixteen bombings he committed as the “Unibomber” from 1978 to 1985, Kaczynski, suffering from late-stage cancer, was transferred in 2012 to a medical center in North Carolina. But he died by suicide on June 10th at age 81. Kaczynski gained his most notoriety, when, several years before his eventual capture, “he used the threat of continued violence to convince The New York Times and The Washington Post to publish his manifesto, a 35,000 word screed against modern life and technology, as well as man-made damages to the environment.”⁵⁷
- **Sinead O’Connor.** The Irish singer-songwriter passed away in July, 2023. Named Rolling Stone’s 1991 artist of the year, O’Connor was nominated for four Grammy awards. A critic of the Roman Catholic church in which she was raised, she condemned Pope Benedict’s 2010 apology for the church’s role in sexual abuse for “not going far enough.”⁵⁸
- **Bill Richardson.** Bill Richardson, who died on September 1, 2023 at the age of seventy-five, served two terms as New Mexico’s governor, seven terms as a congressman from that state, and also served as the Secretary of Energy and later as UN Ambassador under President Clinton. But he is best remembered for his role as a hostage negotiator who helped free numerous Americans held by foreign governments, including most recently WNBA star Britney Griner from a Russian prison.⁵⁹
- **Brooks Robinson.** Hall of fame third baseman Brooks Robinson, an eighteen-time all-star who played his entire twenty-three year career with the Baltimore Orioles, passed away at the age of eighty-six. The modest Robinson, who won sixteen consecutive Gold Glove awards, was widely regarded as the best fielding third baseman in baseball history.⁶⁰ So beloved was he in Baltimore, wrote a Baltimore sports writer in 1977, that “we name our children for him.”⁶¹ Bob Kinnear, a deaf baseball fan, recalled watching Robinson use sign language on TV. When Kinnear saw Robinson in person and asked about Robinson’s use of sign language, Robinson responded that he grew up near a school for the deaf and learned

57. Michael R. Sisak et al., ‘Unabomber’ Ted Kaczynski died by suicide in prison medical center, *AP sources say*, AP (June 11, 2023), <https://apnews.com/article/ted-kaczynski-unabomber-1197f597364b36e56bdbca9837bdc4>.

58. David Morgan, *Notable Deaths in 2023*, CBS NEWS (Oct. 30, 2023), <https://www.cbsnews.com/pictures/notable-deaths-in-2023/>.

59. Jason Rezaian, *Bill Richardson understood what mattered most about U.S. hostages*, WASH. POST (Sept. 2, 2023), <https://www.washingtonpost.com/opinions/2023/09/02/bill-richardson-death-legacy-hostage-diplomacy/>.

60. Paul White, *Brooks Robinson, Baseball Hall of Famer and ‘Mr. Oriole’, dies at 86*, USA TODAY (Sept. 26, 2023), <https://www.usatoday.com/story/sports/mlb/2023/09/26/brooks-robinson-dies-orioles-legend-hall-of-famer-gold-glove/10246280002/>.

61. Dave Sheinin, *Baltimore adored Brooks Robinson for his talent and loved him for his heart*, WASH. POST (Sept. 26, 2023), <https://www.washingtonpost.com/sports/2023/09/26/brooks-robinson-legacy-baltimore/>.

sign language playing with kids from that school. “He became my idol after that,” said Kinnear.⁶²

Tina Turner. A pop and rock star for half a century, Tina Turner died at age eighty-three in late May, 2023. She starred with her abusive husband, Ike Turner, throughout the 1960s and into the 70s until their divorce. But she earned her greatest fame as a solo artist in the 1980s, in a career that lasted for several more decades.⁶³

They really said that?

“They call them that. I call them Americans.”

Response of Senator Tommy Tuberville to question whether he believed white nationalists should be allowed in the military.⁶⁴

“So I would say you be judgmental of the issue, of the action, of the content, of the character of the individual, absolutely. But let’s not tie it to the skin color and say that the skin color determined it.”

Oklahoma Superintendent of Schools, Ryan Walters, explaining how teachers should cover the 1921 Tulsa *race* massacre, what the state-run Oklahoma Historical Society says is, “believed to be the single worst incident of racial violence in American history.”⁶⁵

Trying to explain his remark, Walters later stated: “The Tulsa race massacre [which took place only a few miles from where the law school that helps produce the Journal is located] is a terrible mark on our history. The events on that day were racist, evil, and it is inexcusable. *Individuals* are responsible for their actions and should be held accountable.”⁶⁶ So apparently it would be inappropriate under Oklahoma law banning instruction about systemic racism to teach, as the contemporaneous report of the Red Cross found, that “[t]hirty-five city blocks were looted *systematically*, then burned to a cinder.”⁶⁷ Rather, public school children should only learn that the black owners of 1,000 destroyed homes and the black residents killed or injured by white rioters were the victims of thousands of simultaneous acts of *individual* racism.

62. Hall of Fame Orioles third baseman, Brooks Robinson, dies at 86, NPR MORNING EDITION (Sept. 27, 2023), <https://www.npr.org/2023/09/27/1201956922/hall-of-fame-orioles-third-baseman-brooks-robinson-dies-at-86#:~:text=Hall%20of%20Fame%20Orioles%20third,Robinson%2C%20dies%20at%2086%20%3A%20NPR&text=Hourly%20News-,Hall%20of%20Fame%20Orioles%20third%20baseman%2C%20Brooks%20Robinson%2C%20dies%20at,of%20the%201970%20World%20Series>.

63. Laura Snapes, *Tina Turner: legendary rock’n’roll singer dies aged 83*, GUARDIAN (May 24, 2023), <https://www.theguardian.com/music/2023/may/24/tina-turner-legendary-rocknroll-singer-dies-aged-83>.

64. Zoë Richards, *Alabama senator on white nationalists in the military: ‘I call them Americans’*, NBC NEWS (May 10, 2023), <https://www.nbcnews.com/politics/congress/tommy-tuberville-appears-defend-white-nationalists-military-rcna83874>; Meg Kinnard, *GOP Sen. Tuberville says white supremacists in military aren’t racist, they’re ‘Americans’*, PEOPLE’S WORLD (May 12, 2023), <https://www.peoplesworld.org/article/gop-sen-tuberville-says-white-supremacists-in-military-arent-racist-theyre-americans/>. Tuberville has subsequently drawn the ire of many of his fellow Senators for blocking the confirmation and promotion of hundreds of military officers.

65. Adam Gabbatt, *Outrage as Republican says 1921 Tulsa massacre not motivated by race*, GUARDIAN (July 8, 2023), <https://www.theguardian.com/us-news/2023/jul/08/oklahoma-republican-tulsa-race-massacre>.

66. *Id.* (emphasis added)

67. *Id.*

“[S]laves developed skills which, in some instances, could be applied for their personal benefit.”

Standard for instructing middle schoolers unanimously approved by the Florida Board of Education.⁶⁸

The Florida Education Association, a statewide teachers’ union representing about 150,000 teachers, called the new standards “a disservice to Florida’s students and are a big step backward for a state that has required teaching African American history since 1994.”⁶⁹ Pressed about criticism of his hand-picked Board of Education’s policy to instruct students that slavery had job-training benefits, Florida’s governor stated: “I didn’t do it and I wasn’t involved in it.”⁷⁰ “Governor DeSantis started this fire with the bill that he signed,” responded Chris Christie, one of his opponents for the Republican presidential nomination.⁷¹ “And now,” Christie added, “he doesn’t want to take responsibility for whatever is done in the aftermath of it.”⁷² Bad enough that Florida’s educators are being told to instruct that forced labor was free skills training, but the state’s examples named slavery “beneficiaries” who, it turns out, weren’t even slaves.⁷³

“COVID-19 is targeted to attack Caucasians and Black people. The people who are most immune are Ashkenazi Jews and Chinese.”

Recorded remarks of Robert F. Kennedy, Jr., Democratic, then Independent candidate for president and noted conspiracy theorist speaking at a fundraiser in New York.⁷⁴ The COVID virus, he claimed, “was engineered to spare Ashkenazi Jews and Chinese people.”⁷⁵ That certainly came as news to me, my fellow Ashkenazi Jewish wife, sons, daughters-in-law, grandsons, granddaughter, a nephew and niece, each of whom contracted the virus, my niece three times.

“Someone asked me today in the media, they said, ‘It’s curious, people are curious. What does Mike Johnson think about any issue under the sun?’ I said, ‘Well, go pick up a Bible off your shelf and read it.’ That’s my worldview.”

68. Olivia Land, *New Florida black history curriculum says slavery had ‘personal benefits’*, N.Y. POST (July 20, 2023), <https://www.msn.com/en-us/news/other/new-florida-black-history-curriculum-says-slavery-had-personal-benefits/ar-AA1e8iFP>.

69. Antonio Planas, *New Florida standards teach students that some Black people benefited from slavery because it taught useful skills*, NBC NEWS (July 20, 2023), <https://www.nbcnews.com/news/us-news/new-florida-standards-teach-black-people-benefited-slavery-taught-useful-rcna95418>.

70. Ken Tran, *Chris Christie criticizes Ron DeSantis for Florida curriculum on slavery: ‘Not the words of leadership’*, USA TODAY (July 24, 2023), https://www.usatoday.com/story/news/politics/2023/07/23/chris-christie-florida-slavery-black-history-ron-desantis/70453430007/?utm_source=flipboard&utm_content=user%2FUSAToday.

71. *Id.*

72. *Id.*

73. Jeffrey S. Solocheck, *Benefited from slavery? Critics say some of the state’s examples were never even slaves.*, TAMPA BAY TIMES (July 20, 2023), <https://www.tampabay.com/news/education/2023/07/21/benefited-slavery-critics-say-some-states-examples-were-never-even-slaves/>

74. Jonathan Weisman, *Robert F. Kennedy Jr. Aims Bigoted New Covid Conspiracy Theory About Jews and Chinese*, N.Y. TIMES (July 15, 2023), <https://www.nytimes.com/2023/07/15/us/politics/rfk-jr-remarks-covid.html>.

75. *Id.*

Newly-elected Speaker of the House Michael Johnson explaining in an October 26 interview how to predict his policy positions.⁷⁶ This apparently explains his positions tying aid to Israel to cuts to IRS funding and opposing universal background checks for gun purchases.

Turkey drops opposition to Sweden Joining NATO

On the eve of the NATO summit in Vilnius, Lithuania, Turkey's President Erdogan announced that Turkey was dropping its long-standing opposition to Sweden's membership in NATO, bringing all the nations on the Baltic Sea – save Russia – into the defense organization.⁷⁷

Unfathomable Tragedies for North Africa

A magnitude 6.8 earthquake struck Morocco this summer with damage stretching from “Marrakech south to villages in the Atlas Mountains, where the epicenter of the quake was located.”⁷⁸ The Moroccan government reported that the quake had killed 2,900 persons and injured another 5,500.⁷⁹ Not long afterward, “Mediterranean storm Daniel caused two dams to collapse, sending waves more than 20 feet high through the heart of Derna,” a port city in eastern Libya.⁸⁰ The flooding killed at least 11,000 persons and destroyed much of the city. City officials “said the death toll could reach 20,000.”⁸¹

Aborted Mutiny, Suspicious Death

In late June, Yevgeny Prigozhin, head of the Wagner Group mercenaries, called off his march on Moscow during which his troops shot down several Russian helicopters, and in an agreement claimed to have been brokered by Belarus president Lukashenko, agreed to move his soldiers to Belarus in exchange for charges of mutiny being dropped by Russian president Putin. Days later, the Belarusian president declared that Prigozhin had returned to St. Petersburg and that Prigozhin's troops were still stationed in Russian-occupied Ukraine.⁸² Months later, Prigozhin was presumed to have died in a suspicious plane crash northwest of Moscow.⁸³ Meanwhile Russia continues its indiscriminate shelling of civilians and other war crimes against Ukraine.

76. Luke Broadwater, *9 Takeaways From Mike Johnson's First Interview as Speaker*, N.Y. TIMES (Oct. 27, 2023), <https://www.nytimes.com/2023/10/27/us/politics/mike-johnson-interview-hannity-takeaways.html>.

77. Emily Rauhala et al., *Turkey drops opposition to Sweden's NATO bid on eve of summit*, WASH. POST (July 10, 2023), <https://www.washingtonpost.com/world/2023/07/10/turkey-nato-summit-eu-sweden/>.

78. Alex Sundby, *Morocco earthquake death toll, map and more key details following 6.8 magnitude disaster*, CBS NEWS (Sept. 12, 2023), <https://www.cbsnews.com/news/morocco-earthquake-2023-marrakech-map-death-toll-magnitude-when/>.

79. *Id.*

80. Patrick Smith, *Death toll hits 11,300 in Libyan city destroyed by floods*, NBC NEWS (Sept. 14, 2023), <https://www.nbcnews.com/news/world/libya-floods-death-toll-derna-rcna105001>.

81. *Id.*

82. Piotr Sauer, *Wagner boss Prigozhin has returned to Russia, Lukashenko says*, GUARDIAN (July 6, 2023), <https://www.theguardian.com/world/2023/jul/06/wagner-boss-yevgeny-prigozhin-russia-alexander-lukashenko-belarus#:~:text=The%20Russian%20mercenary%20chief%20Yevgeny,Alexander%20Lukashenko%20said%20on%20Thursday>.

83. Brian Murphy, *Yevgeniy Prigozhin, Russian mercenary leader who became Putin foe*, WASH. POST (Aug. 27, 2023), <https://www.washingtonpost.com/obituaries/2023/08/26/yevgeniy-prigozhin-putin-wagner-dies/>.

The Continuing Appeal of Nationalist Autocrats, but Some Pushback, too

What New York Times reporter Andrew Higgins described as a “Russia-friendly populist party” headed by former Prime Minister Robert Fico, garnered the largest share of votes in EU and NATO member Slovakia’s nationwide parliamentary election. Whether his party, which favors cutting aid to Ukraine, will be able to form a government, and if so, how much that government could affect the policies of the EU and NATO, remains unknown.⁸⁴ In contrast, parliamentary elections and a record turnout in Poland saw the right wing Law and Justice Party lose its majority.⁸⁵

More Misery for Ethnic Armenians

In September, Azerbaijan took control of the self-declared independent Republic of Nagorno-Karabakh, a predominantly ethnic Armenian region of about 120,000 persons. While the residents have been promised their religious and cultural freedom by the Azerbaijan government, “more than 76,000 people,” fearing genocide, have fled to neighboring Armenia.⁸⁶ “Some officials fear that the entire population will leave.”⁸⁷

Claiming False Credit

“I’m always happy to support this type of funding in Congress.”

Alabama Congressman Robert Aderholt praising funding for a bridge in Courtland, Alabama authorized under Infrastructure Act he had opposed.⁸⁸

Climate Change

The hottest July in the recorded history of the planet. Wildfires across Canada⁸⁹ that brought some of the worst air quality on earth for days at a time to New York City, Philadelphia, Washington, DC, Pittsburgh, Detroit, and Chicago.⁹⁰ The first tropical storm to hit southern California in over eighty years. One of the deadliest wildfires in American history in Maui. Nothing to see here, says Presidential aspirant, Vivek Ramaswamy. Climate change is “a hoax.”⁹¹

Tell that to the residents of Lahaina, southern California, New York City, most of Canada, homeowners flooded in Vermont or the farmers in Pakistan who

84. Andrew Higgins, *What Does a Russia-Leaning Party Win in an E.U. Nation Mean for Ukraine?*, N.Y. TIMES (Sept. 30, 2023), <https://www.nytimes.com/2023/09/30/world/europe/slovakia-election-ukraine.html>.

85. Rob Picheta, *Poland’s pro-European opposition seems set to oust populists, but tense days lie ahead*, CNN (October 17, 2023), <https://www.cnn.com/2023/10/17/europe/poland-election-final-results-intl/index.html>.

86. Francesca Ebel, *For three decades, Nagorno-Karabakh sought statehood. That quest is dead.*, WASH. POST (Sept. 28, 2023), <https://www.washingtonpost.com/world/2023/09/28/nagorno-karabakh-dissolved-azerbaijan-armenia/>.

87. *Id.*

88. Tony Romm, *They opposed the infrastructure law. Now, some in the GOP court its cash*, WASH. POST (July 9, 2023), <https://www.washingtonpost.com/business/2023/07/09/gop-spending-infrastructure-ira-biden/>.

89. May, June and early July saw a rash of wildfires across eastern Canada (May and June also being Canada’s hottest May and June on record). Scott Dance, *Why a sudden surge of broken heat records is scaring scientists*, WASH. POST (July 6, 2023), <https://www.washingtonpost.com/weather/2023/07/06/earth-record-heat-climate-extremes/>.

90. Emma Newburger, *New York City tops world’s worst air pollution list from Canadian wildfire smoke*, CNBC (June 7, 2023), <https://www.cnbc.com/2023/06/07/canadian-wildfire-smoke-nyc-residents-urged-to-stay-inside.html>.

91. Nick Robertson, *Vivek Ramaswamy says US ‘climate change agenda’ is a ‘hoax’*, HILL (Aug. 12, 2023), <https://thehill.com/homenews/campaign/4150183-ramaswamy-calls-climate-change-agenda-a-hoax/>.

saw flooding of a third of the country during the summer of 2022. Tell that to Hawaii Electric Company, now facing a number of lawsuits for failing to adequately prepare for the increased risks of wildfire attributable to climate change and now considering bankruptcy.⁹² On August 15th, S&P Global downgraded the debt of the utility's parent company, Hawaiian Electric Industries, to junk status and that same week, filed a negligence lawsuit against the utility's parent company.⁹³ It alleges that the defendants had prior warnings about the wildfires but either "left their powerlines energized or, after deenergizing them, re-energized them too soon."⁹⁴ And tell that to the risk averse insurance companies that have dropped coverage of homeowners and businesses in regions those insurance companies believe pose a too risky bet given *their* expectations of a changing climate.⁹⁵

"Unprecedented heat" has become a cliché. I did a word search on the Washington Post website, and the term appears in the title or text of forty-nine articles going back only six years.⁹⁶ Had I looked for other similar terms, I would undoubtedly have gotten even more results. The same July 6, 2023 edition of the Post featuring a front page article entitled, *Why a sudden surge of broken heat records is scaring scientists*⁹⁷ also announced *Record-crushing heat blasts Florida, with no end in sight*.⁹⁸ The former article reported that Monday, July 3, 2023, was "Earth's hottest day in at least 125,000 years. Tuesday was hotter."⁹⁹ The latter article recounted that Miami set *fourteen* heat records in by the end of June.¹⁰⁰ A third article in that day's Post warned that rapid acceleration of glacier melts in Norway – "one of the world's fastest-warming places" – are resulting in the release of high concentrations of "ancient methane gas."¹⁰¹ This phenomenon presents a double whammy – sea level rises and more greenhouse gases entering the atmosphere.

Also writing for the Washington Post, meteorologist Dan Stillman recounted the impact and likely causes of "prolific flooding that inundated portions of New York's Hudson Valley and Vermont" in early July – two months' worth of rain

92. Ethan Howland, *Hawaiian Electric eyes bankruptcy after Maui wildfires in 'prudent scenario planning'*, UTIL. DIVE (Aug. 21, 2023), https://www.utilitydive.com/news/hawaiian-electric-eyes-bankruptcy-after-maui-wildfires/691333/?utm_source=Sailthru&utm_medium=email&utm_campaign=Issue:%202023-08-21%20Utility%20Dive%20Newsletter%20%5Bissue:53763%5D&utm_term=Utility%20Dive.

93. Kavya Balaraman, *Hawaiian Electric faces financial, cost recovery risks from Maui wildfires: Moody's*, UTIL. DIVE (Aug. 16, 2023), https://www.utilitydive.com/news/hawaiian-electric-maui-wildfire-law-suit-financial-risk-moody-rating/690984/?utm_source=Sailthru&utm_medium=email&utm_campaign=Issue:%202023-08-16%20Utility%20Dive%20Newsletter%20%5Bissue:53620%5D&utm_term=Utility%20Dive.

94. *First Individual Maui Wildfire Lawsuit Against Utilities filed by Singleton Schreiber*, SINGLETON SCHREIBER (Aug. 14, 2023), <https://singletonschreiber.com/first-individual-maui-wildfire-lawsuit-against-utilities-filed-by-singleton-schreiber/>.

95. Justine McDaniel, *Citing climate change risks, Farmers is latest insurer to exit Florida*, WASH. POST (July 12, 2023), <https://www.washingtonpost.com/climate-environment/2023/07/12/farmers-insurance-leaves-florida/>.

96. Search – "unprecedented heat", WASH. POST, <https://www.washingtonpost.com/search/?query=%22unprecedented+heat%22&time=all&sort=relevancy> (last visited Oct. 31, 2023).

97. Dance, *supra* note 89.

98. Ian Livingston, *Record-crushing heat is blasting Florida, with no clear end*, WASH. POST (July 6, 2023), <https://www.washingtonpost.com/weather/2023/07/06/florida-hottest-year-miami-tampa-tallahassee-drought/>.

99. Dance, *supra* note 89.

100. Livingston, *supra* note 98.

101. Chris Mooney, *Reeling Arctic glaciers are leaving bubbling methane in their wake, scientists warn*, WASH. POST (July 6, 2023), <https://www.washingtonpost.com/climate-environment/2023/07/06/arctic-glacier-melt-methane-global-temperatures/>.

that fell in two days. “Rainfall that saturated the ground ahead of the storm, double the normal amount of moisture, an atmospheric traffic jam and Vermont’s flood-prone terrain,” coupled with “human-caused climate change,” he concluded, had “boosted the intensity of the rainfall.”¹⁰² The very warm Atlantic Ocean that “may have contributed to the intense rainfall,” he added, had seen “water temperatures near Florida simmering in the 90s.”¹⁰³ And, he ominously noted, “[t]he Intergovernmental Panel on Climate Change projects that heavy precipitation will increase by 7 percent for every 1.8 degrees Fahrenheit (1 degree Celsius) of warming.”¹⁰⁴

- **Climate Patterns run AMOC**

Have you heard of the Atlantic Meridional Overturning Circulation (AMOC)? As Washington Post climate reporter Sarah Kaplan notes, it refers to an “aquatic conveyor belt” that “transports warm, salty water from the tropics to the North Atlantic, and then sends colder water back south along the ocean floor.”¹⁰⁵ And it is what keeps Northern Europe more temperate in the winter months and temperatures in the tropics more moderate. There is general consensus among climate scientists that warming ocean temperatures will eventually push AMOC over the tipping point, *i.e.*, “shut it down entirely” and that “[t]he shift would be as abrupt and irreversible as turning off a light bulb.”¹⁰⁶ But there is considerable debate about whether such changes are imminent. The results of the most alarming study “suggest that the AMOC could collapse at any time between now and 2095, and as early as 2025.”¹⁰⁷

- **The climate alarm bells keep ringing**

The record temperatures recorded across the southern and southwestern United States, southern Europe, Asia and northern Africa during July – and particularly their protracted nature – “would have been virtually impossible” to explain as other than the product of climate change. This was the conclusion of a July 24 study by the World Weather Attribution Network, what Washington Post reporter Bradley Dennis describes as “a coalition of scientists that conducts rapid analyses to determine how the warming atmosphere influences extreme weather events.”¹⁰⁸ While the study has not yet been peer-reviewed, Dennis notes, its conclusion matches the findings of the UN’s Intergovernmental Panel on Climate Change.¹⁰⁹ Put another way, this is not the new normal. It will get worse.

102. Dan Stillman, *Five key factors that spurred the historic floods in Vermont*, New York, WASH. POST (July 11, 2023), <https://www.washingtonpost.com/weather/2023/07/11/vermont-flooding-cause/>.

103. *Id.*

104. *Id.*; see also Peter Ditlevsen & Susann Ditlevsen, *Warning of forthcoming collapse of the Atlantic meridional overturning circulation*, NATURE COMM’NS (July 25, 2023), <https://www.nature.com/articles/s41467-023-39810-w>.

105. Sarah Kaplan, *Scientists detect sign that a crucial ocean current is near collapse*, WASH. POST (July 25, 2023), <https://www.washingtonpost.com/climate-environment/2023/07/25/atlantic-ocean-amoc-climate-change/>.

106. *Id.*

107. *Id.*

108. Bradley Dennis, *Heat waves in US and Europe would have been ‘virtually impossible’ without climate change, new report finds*, WASH. POST (July 25, 2023), <https://www.washingtonpost.com/climate-environment/2023/07/25/heat-wave-us-europe-climate-change/>.

109. *Id.*

More Anti-Immigrant Animus

Texas Governor Abbott faced a lawsuit by the federal government over his decision to install floating barriers and barbed wire in the middle of the Rio Grande to discourage migrants from crossing the river.¹¹⁰ The lawsuit was prompted by an internal complaint by a Texas State trooper who said that these measures had “put migrants, including young children, at risk of drowning and serious injury. The trooper also claimed Texas officials had been directed to withhold water and push them back into the river. In one instance, the trooper said he and his team rescued a woman who was stuck in the razor wire and having a miscarriage.”¹¹¹ This prompted Republican congressman Tony Gonzalez, whose district includes a substantial portion of that border, to label the governor’s measures as “unacceptable.”¹¹²

Backfired

When polling showed that a ballot initiative to add abortion rights to Ohio’s state constitution had 58% support, the Ohio legislature, which had only recently banned August special elections, changed the law and scheduled an August special election. Its ostensible purpose: a referendum to amend Ohio’s constitution to require a 60% threshold for future referenda to become part of the state’s constitution. But its sponsors made no secret of its central purpose, to apply the 60% threshold to the abortion rights referendum scheduled for only months later. The August referendum failed badly and on November 7th Ohioans voted to add abortion and contraception rights to the state’s constitution.¹¹³

Trump in the news

- **Ninety-one**

Ninety-one – that’s the current number of felony charges facing the former President after three additional indictments – two federal indictments in Florida and in the District of Columbia, and a state indictment in Georgia led to three additional arraignments. (My spring 2023 Editor-in Chief Page noted that Trump had been indicted and arraigned on other felony charges in state court in New York earlier in the year). That’s on top of the civil liability rulings and two gag orders¹¹⁴

110. Kierra Frazer & Josh Gerstein, *DOJ sues Texas and Gov. Greg Abbott over Rio Grande barrier*, POLITICO (July 24, 2023), <https://www.politico.com/news/2023/07/24/doj-sues-texas-and-gov-greg-abbott-over-rio-grande-barrier-00107896>; see also *US v. Greg Abbott*, Civil Action No. 1:23-cv-00853 (W.D. Tex. July 24, 2023), <https://www.documentcloud.org/documents/23885825-usvabbottborderbuoyscomp072423#:~:text=in-frastructure-,1%3A23%2Dcv%2D00853,-USvAbbottBorderBuoysComp072423>.

111. Caitlin Yilek, *Rep. Tony Gonzales, who represents 800 miles of U.S.-Mexico border, calls border tactics “not acceptable”*, CBS NEWS (July 23, 2023), <https://www.cbsnews.com/news/tony-gonzales-texas-rio-grande-buoys-razor-wire-greg-abbott-face-the-nation/>.

112. *Id.*

113. Melissa Quinn, *Ohio votes against Issue 1 in special election. Here’s what that could mean for abortion rights.*, CBS NEWS (Aug. 9, 2023), <https://www.cbsnews.com/news/ohio-issue-1-fails-to-pass-2023-results/>; Laura Hancock & Andrew J. Tobias, *Ohio voters guarantee abortion rights 16 months after U.S. Supreme Court strikes Roe*, CLEVELAND.COM (Nov. 8, 2023), <https://www.cleveland.com/open/2023/11/ohio-voters-guarantee-abortion-rights-16-months-after-us-supreme-court-strikes-roe.html>.

114. Following Trump’s “personal attacks” directed to the prosecutor, the trial judge in the civil case and the trial judge’s clerk, Trump was slapped with a gag order barring him from attacking or even referencing the court staff on email, social media or in public remarks. Jonah E. Bromwich, *Trump Ordered Not to Comment on Judge’s Staff in Fraud Case*, N.Y. TIMES (Oct. 3, 2023), <https://www.nytimes.com/2023/10/03/nyregion/trump-gag-order-fraud-trial.html>. Attacks on the prosecutors in the election interference case led federal district court Judge Chutkan to issue a similar gag order weeks later. Kyle Cheney & Josh Gerstein, *Judge imposes gag order on Donald Trump in D.C. trial*, POLITICO (Oct. 16, 2023), <https://www.politico.com/news/2023/10/16/judge->

against him and his company. There was the September summary judgement against the company he leads – the Trump Organization (previously convicted of fifteen felony counts of tax evasion) on extensive fraud charges and the consequent order stripping the company of the authority to do business in New York State.¹¹⁵ Add to that another summary judgment in the second civil suit by E. Jean Carroll for *further* defamation (regarding Trump’s statements following a jury verdict finding him liable for sexual abuse and defamation). Still at issue in those cases is how much he owes in damages.

- **Mug shots and guilty pleas**



(From top left) Mug shots from the arrest of Kenneth Chesebro (plead guilty), Donald Trump, Sydney Powell (plead guilty), Rudolph Giuliani, Mark Meadows (accepted immunity deal from federal special prosecutor Jack Smith) and John Eastman by Fulton County Sheriff.¹¹⁶

imposes-gag-order-on-donald-trump-in-d-c-trial-00121743#:~:text=A%20federal%20judge%20has%20barred,status%20as%20a%20criminal%20defendant.

115. Shayna Jacobs, *N.Y. judge finds Trump committed fraud and sanctions his attorneys*, WASH. POST (Sept. 26, 2023), <https://www.washingtonpost.com/national-security/2023/09/26/ny-judge-finds-trump-committed-fraud-sanctions-his-attorneys/>.

116. Kenneth Chesebro (top row, left) charged with seven felony counts (plead guilty to conspiring with Trump); Donald Trump (top middle), charged with thirteen felony counts; Sydney Powell (top right) charged with seven felony counts (plead to misdemeanors); Rudolph Giuliani (bottom left), charged with thirteen felony counts; and Mark Meadows (bottom center), charged with two felony counts; and John Eastman, charged with nine felony counts. *See the mug shots in Trump’s Georgia case: Meadows, Giuliani, Powell, Ellis, Chesebro and others*, NBC NEWS (Aug. 24, 2023), <https://www.nbcnews.com/politics/donald-trump/mugshot-rudy-giuliani-jenna-ellis-trump-georgia-surrender-rcna101670>.

- **Lying about his weight, too?**¹¹⁷

The booking information from Fulton County following his arrest lists indicted former President Trump as 6'3" and 215 pounds, numbers he was apparently allowed to fill out himself during booking.¹¹⁸ The dubious weight claim drew derisive comparisons to several quarterbacks with similar listed height and weight.¹¹⁹ You decide:



Donald Trump



NFL Quarterback Lamar Jackson

"We are unique among the world's militaries. We don't take an oath to a country. We don't take an oath to a tribe. We don't take an oath to a religion. We don't take an oath to a king, or a queen, or to a tyrant or a dictator. And we don't take an oath to a wannabe dictator."

Remarks of General Mark Milley, outgoing chairman of the Joint Chiefs of Staff, during his retirement speech widely seen as a rebuke to former President Trump, who a week earlier had "called Millie a traitor who might deserve the death penalty for his communications with China near the end of the Trump administration."¹²⁰

What can I add that has not already been said? A person that thinks those who defend their country in uniform, or are shot down or seriously wounded in combat, or spend years being tortured as POWs are all 'suckers' because 'there is nothing in it for them.' A person that did not want to be seen in the presence of military amputees because 'it doesn't look good for me.' A person who demonstrated open contempt for a Gold Star family – for all Gold Star families – on TV during the 2016 campaign, and rants that our most precious heroes who gave their lives in America's defense are 'losers' and wouldn't visit their graves in France.

A person that has no idea what America stands for and has no idea what America is all about. A person who cavalierly suggests that a selfless warrior who has served his country for forty years in peacetime and

117. The "too" refers to the finding by Judge Engoron that Trump and his company had "inflated Trump's net worth in business transactions," Jacobs, *supra* note 114, and Judge Engoron's subsequent finding that Trump "is not credible" in support of a \$10,000 fine for Trump's second violation of the judge's gag order. Jeremy Herb & Lauren del Valle, *Judge fines Trump \$10,000 for violating gag order*, CNN (Oct. 25, 2023), <https://www.cnn.com/politics/live-news/trump-civil-fraud-trial-10-25-23/index.html>.

118. Matt Hladik, *Everyone Said The Same Thing After Donald Trump's Height, Weight Were Released*, SPUN (Aug. 24, 2023), <https://thespun.com/nfl/everyone-said-the-same-thing-after-donald-trumps-height-weight-were-released>.

119. *Id.*

120. Maureen Groppe & Tom Vanden Brook, *Gen. Milley says military doesn't answer to 'wannabe dictator' in apparent rebuke of Trump*, USA TODAY (Sept. 29, 2023), <https://www.usatoday.com/story/news/politics/2023/09/29/mark-milley-trump-dictator/70964776007/#:~:text=Maureen%20Groppe,USA%20TODAY>.

war should lose his life for treason – in expectation that someone will take action. A person who admires autocrats and murderous dictators. A person that has nothing but contempt for our democratic institutions, our Constitution, and the rule of law. There is nothing more that can be said. God help us.

Remarks of John Kelly, former chief of staff to Donald Trump, about his former boss.¹²¹

Nine Month Speakership

Kevin McCarthy was elected Speaker of the House after fifteen contentious rounds of votes and a series of promises he later couldn't or wouldn't keep – in the first instance promises to the far right members of his caucus to slash spending and in the latter case reneging on his agreement with Democrats on future spending levels as part of a bipartisan deal to raise the debt ceiling and avoid default on the nation's debt. Nine months later he became the first Speaker of the House to be removed from that office in the nation's history. His removal came only days after he had reached an eleventh hour bipartisan forty-five day deal to avoid a government shutdown that prompted the far right members of his party to move for his ouster for cooperating with Democrats. Going on national television the next day to blame Democrats, all but one of whom supported the deal, for the near shutdown apparently earned him no goodwill from the opposition party, who chose not to bail him out.¹²² Jim Jordan subsequently sought the speakership, but what members of his party called bullying tactics and that one member described as including “threatening tactics and pressure campaigns,” as well as “death threats” to the member and his family, led to his defeat.¹²³ The speakership remained vacant for three weeks until 2020 election denier Mike Johnson was elected.¹²⁴

Florida – The Nation's Book-banning Capital

Florida's combative governor famously remarked that Florida is the place where “woke goes to die.”¹²⁵ Its public schools are also apparently where books go to die. A report from the non-profit PEN America recounted that from July 2022 to June 2023 there were “3,362 instances of bans in public school classrooms and libraries” in the United States. And “1,400 — or 40% of the national total —

121. Jake Tapper, *Exclusive: John Kelly goes on the record to confirm several disturbing stories about Trump*, CNN POLITICS (Oct. 3, 2023), <https://www.cnn.com/2023/10/02/politics/john-kelly-donald-trump-us-service-members-veterans/index.html>.

122. Lisa Mascaro & Farnoush Amiri, *Speaker McCarthy ousted in historic House vote, as scramble begins for a Republican leader*, AP (Oct. 3, 2023), <https://apnews.com/article/mccarthy-gaetz-speaker-motion-to-vacate-congress-327e294a39f8de079ef5e4abfb1fa555>.

123. @JakeSherman, X (Oct. 19, 2023, 10:38 AM), <https://twitter.com/JakeSherman/status/1715029541414990221>.

124. Melissa Quinn et al., *Mike Johnson elected House speaker with unanimous GOP support, ending weeks of chaos*, CBS NEWS (Oct. 25, 2023), <https://www.cbsnews.com/live-updates/house-speaker-vote-live-updates-10-25-2023/>.

125. Matt Dixon & Gary Fineout, *'Where woke goes to die': DeSantis, with eye toward 2024, launches second term*, POLITICO (Jan. 3, 2023), <https://www.politico.com/news/2023/01/03/desantis-2024-second-term-00076160>. Not satisfied with limiting curricula, DeSantis has stated his intention to strip universities of their accreditation if they have DEI programs. Ja'han Jones, *DeSantis: I'll take accreditation from schools with DEI programs*, MSNBC NEWS (Oct. 5, 2023), <https://www.msnbc.com/the-reidout/reidout-blog/desantis-dei-college-accreditation-diversity-rcna119051>.

took place in Florida.”¹²⁶ Texas, Missouri and Utah round out the top four, but the national trend is equally alarming. Book banning, already at disturbingly high levels as I have written in a previous Editor-in-Chief’s Page, increased by a third just in the last year. As the Miami Herald story on the PEN America report notes, Florida law “allows a parent or community member to object to instructional material or library books and requires a school to remove the book or books within five days of a challenge and remain off library shelves until the review is completed.”¹²⁷ This, it says, amounts to a “guilty until proven innocent policy” being replicated in other states.¹²⁸

Hamas Terrorists Strike Israel

You know, there are moments in this life — and I mean this literally — when the pure, unadulterated evil is unleashed on this world. The people of Israel lived through one such moment this weekend. The bloody hands of the terrorist organization Hamas — a group whose stated purpose for being is to kill Jews.

This was an act of sheer evil.

More than 1,000 civilians slaughtered — not just killed, slaughtered — in Israel. Among them, at least 14 American citizens killed. Parents butchered using their bodies to try to protect their children. Stomach-turning reports of being — babies being killed.

Hamas does not stand for the Palestinian people’s right to dignity and self-determination. Its stated purpose is the annihilation of the State of Israel and the murder of Jewish people.

They use Palestinian civilians as human shields.

Hamas offers nothing but terror and bloodshed with no regard to who pays the price.

President Biden’s October 10, 2023 speech to the nation in the aftermath of Hamas terrorist attacks on Israeli civilians.¹²⁹

Almost fifty years to the day from the start of the Yom Kippur war, Hamas terrorists,¹³⁰ opposed to the very existence of the state of Israel and in control of Gaza for nearly twenty years,¹³¹ staged a surprise, multi-pronged, monstrous attack

126. Amanda Geduld, *Florida now leads the country in book bans, new PEN report says. How did that happen?*, MIAMI HERALD (Sept. 22, 2023), <https://www.miamiherald.com/news/local/education/article279568719.html#storylink=cpy>.

127. *Id.*

128. *Id.*

129. *Remarks by President Biden on the Terrorist Attacks in Israel*, WHITE HOUSE (Oct. 10, 2023), <https://www.whitehouse.gov/briefing-room/speeches-remarks/2023/10/10/remarks-by-president-biden-on-the-terrorist-attacks-in-israel-2/#:~:text=The%20brutality%20of%20Hamas%20%E2%80%94%20this,genocide%20of%20the%20Jewish%20people>.

130. *Counter Terrorism Guide – Terrorist Groups: Hamas*, DIR. NAT’L INTEL., <https://www.dni.gov/nctc/groups/hamas.html>.

131. *Id.*

on Israel. They slaughtered hundreds of civilians attending an outdoor music festival, fired thousands of indiscriminate missiles at civilian populations, and captured more than two hundred Israeli women, children, whole families and the elderly as well as soldiers.¹³² At least fourteen Americans are among the thousand persons killed by Hamas; other Americans are also known to be among the hostages.¹³³ It is almost certain that, as they have repeatedly done with members of their own population,¹³⁴ Hamas's brutal leadership is likely to use those captured as human shields or bargaining chips for the release of Hamas terrorists now in Israeli prisons. And for weeks it blocked Americans visiting family in Gaza from leaving despite the wartime dangers to civilians there.¹³⁵ A likely errant Islamic Jihad missile claimed several hundred lives outside a Gaza hospital,¹³⁶ but before the evidence was in, many media outlets reported the deaths as a bombing by the Israeli government.¹³⁷ Recordings of Hamas commanders confirmed their knowledge that Israel was not at fault,¹³⁸ but the misinformation suited Hamas terrorists well: the erroneous first media reports sparked protests around the world and sharp increases in antisemitism, particularly on college campuses here¹³⁹ and

132. Inderdeep Bains & Natalie Lisbona in Tel Aviv, *Hamas war: The horrifying stories of Israelis taken as hostages by gunmen*, DAILY MAIL (Oct. 9, 2023), <https://www.dailymail.co.uk/news/article-12608609/Pawns-merciless-terrorists-horrifying-stories-just-100-hostages-stolen-murderous-Hamas-invaders.html>.

133. Ron Kampeas, *US reports at least 9 Americans dead in Hamas invasion of Israel*, JTA (Oct. 9, 2023), <https://www.jta.org/2023/10/09/united-states/us-reports-at-least-nine-americans-dead-in-hamas-invasion-of-israel>.

134. Denouncing the Use of Civilians as Human Shields by Hamas and Other Terrorist Organizations in Violation of International Humanitarian Law, H.R. 107, 113th Cong. (2nd Sess. 2014); and Condemning the Murder of Israeli and Palestinian Children in Israel and the Ongoing and Escalating Violence in that Country, H.R.J. Res. 665, 113th Cong. (2nd Sess. 2014), <https://www.govinfo.gov/content/pkg/CHRG-113hhrg88835/html/CHRG-113hhrg88835.htm>.

135. Peter Wade, *Blinken: Hamas Is Blocking Americans From Leaving Gaza*, ROLLING STONE (Oct. 22, 2023), <https://www.rollingstone.com/politics/politics-news/blinken-hamas-american-hostages-gaza-1234859913/> (“We’ve had people come to Rafah, the crossing with Egypt. And to date, at least, Hamas has blocked them from leaving, showing once again, its total disregard for civilians of any kind who are stuck in Gaza.”).

136. Alexander Smith et al., *Gaza hospital blast likely a Palestinian Islamic Jihad rocket misfire, U.S. officials say*, NBC NEWS (Oct. 19, 2023), <https://www.nbcnews.com/news/world/live-blog/israel-hamas-war-live-updates-rcna120978>. For its part, Hamas “has yet to produce or describe any evidence linking Israel to the strike, says it cannot find the munition that hit the site and has declined to provide detail to support its count of the casualties.” Patrick Kingsley & Aaron Boxerman, *Hamas Fails to Make Case That Israel Struck Hospital*, N.Y. TIMES (Oct. 23, 2023), <https://www.nytimes.com/2023/10/22/world/middleeast/israel-gaza-hospital-evidence.html?smid=url-share>.

137. Alexandra Steigrad, *Dan Abrams slams media for ‘rush to judgment’ about Gaza hospital strike*, N.Y. POST (Oct. 18, 2023), <https://nypost.com/2023/10/18/dan-abrams-slams-media-for-rush-to-judgment-over-gaza-hospital-strike/>.

138. The Editorial Board, *Hamas’s Hospital Lie and the Laws of War*, WALL ST. J. (Oct. 18, 2023), https://www.wsj.com/articles/gaza-hospital-hamas-israel-palestine-president-biden-91892b9c?mod=WTRN_pos3&cx_testId=3&cx_testVariant=cx_171&cx_artPos=2 (“I am telling you this is the first time we see a missile like this falling, and so that’s why we are saying it belongs to Palestinian Islamic Jihad,” one Hamas member began. “It’s from us?” the other answered. “It looks like it. They are saying that the shrapnel from the missile is local shrapnel and not like Israeli shrapnel.”); Yaniv Kubovich, et al., *Israeli Army Presents Video, Audio to Show Islamic Jihad Responsible for Gaza Hospital Blast*, HAARETZ (Oct. 18, 2023), <https://www.haaretz.com/israel-news/2023-10-18/ty-article/israeli-army-presents-video-audio-to-show-islamic-jihad-behind-gaza-hospital-blast/0000018b-41f1-d242-abef-53f7d6570000>.

139. Nick Anderson, *War in Mideast inflames college campuses and raises fears of antisemitism*, WASH. POST (Oct. 18, 2023), <https://www.washingtonpost.com/education/2023/10/18/university-israel-hamas-college-tensions/>; Ron Kampeas, *White House convenes meeting to address spike in campus antisemitism during Israel-Hamas war*, JTA (Oct. 30, 2023), https://www.jta.org/2023/10/30/politics/white-house-convenes-summit-to-address-spike-in-campus-antisemitism-during-israel-hamas-war?utm_source=JTA_Maropost&utm_campaign=JTA_DB&utm_medium=email&mpweb=1161-63867-25046.

in cities in Europe.¹⁴⁰ The Hamas brutality has also sparked an uptick in Islamophobia, including the shocking killing of a young Muslim child in Chicago,¹⁴¹ and the revenge killing by West Bank settlers of scores of Palestinians, including a father and son on their way to a funeral.¹⁴² Hamas's continued use of its civilian population as human shields while it withholds stockpiles of fuel and food has led to many civilian deaths and untold misery for the residents of Gaza.¹⁴³ The thousands of deaths of civilians in Gaza, as well as uncertainty about plans for the day after, and the failure of Netanyahu's government to reign in right wing extremist settlers in the West Bank have also sparked debate within Israel and criticism from other nations.

More Mass Shootings

In a nation awash in firearms and averaging nearly two mass shootings a day,¹⁴⁴ the October 25, 2023, mass shooting in Lewiston, Maine still managed to shock. The killer's rampage, which took eighteen lives and injured more than a dozen others, was the largest mass shooting this year.

Concluding thoughts

As always, I owe a deep debt of gratitude to the authors, peer review editors and student editors who devote long hours to make the Journal possible. Our newest Student Editor-in-Chief, Madison Plumhoff, has had an especially daunting challenge in her first months on the job. She's had to manage the production of our fall edition and a simultaneously issued special edition devoted to RTO governance issues, all while holding down a full student caseload and grieving over the loss of two family members. Finally, I want to congratulate our talented Executive Editor, Kat Gamache, on the publication of her first article for this Journal, a timely piece updating practitioners on the ins and outs of merger regulation under FPA section 203. Happy Thanksgiving.

Harvey Reiter

Washington DC November 2023

140. Niamh Kennedy et al., *France, UK and Germany step up security measures amid fears of attacks against Jewish community*, CNN (Oct. 8, 2023), [https://www.cnn.com/videos/world/2023/10/19/exp-protests-antisemitic-europe-bell-pkg-101912aseg2-cnni-world.cnn](https://www.cnn.com/2023/10/08/europe/france-uk-germany-security-measures-hamas-attack-intl/index.html#:~:text=The%20UK%2C%20France%2C%20and%20Germany,attacks%20launched%20by%20Hamas%20militants; Melissa Bell, Hate crimes on the rise in western Europe after Hamas attacks, CNN (Oct. 19, 2023), <a href=).

141. Sophia Tareen, *Muslim boy killed and woman wounded in Illinois hate crime motivated by Israel-Hamas war, police say*, AP (Oct. 16, 2023), <https://apnews.com/article/muslim-boy-killed-chicago-landlord-will-county-5135dea218326d6e639a996564d9369e>.

142. Zeena Saifi et al., *Gaza conflict spills into the West Bank as settler attacks and clashes leave dozens of Palestinians dead*, CNN (Oct. 19, 2023), <https://www.cnn.com/2023/10/19/middleeast/west-bank-settler-attacks-israel-cmd-intl/index.html>

143. Matthew Rosenberg & Maria Abi-Habib, *As Gazans Scrounge for Food and Water, Hamas Sits on a Rich Trove of Supplies*, New York Times (Oct. 27, 2023), <https://www.nytimes.com/2023/10/27/world/middleeast/palestine-gazans-hamas-food.html>.

144. *Mass Shootings in 2023*, GUN VIOLENCE ARCHIVE, <https://www.gunviolencearchive.org/reports/mass-shooting?page=22> (last visited Nov. 9, 2023).