



Rudolf Fara

November 4th, 2024

## How gerrymandering could help deliver the presidency to Donald Trump



*If neither candidate in the November 5<sup>th</sup> US presidential election can gain the 270 Electoral College votes required to win the White House, under the 12<sup>th</sup> amendment of the US Constitution, it then falls to the US House of Representatives to decide the election's outcome through a contingent election. **Rudolf Fara** writes that*

*gerrymandering has significantly increased Republican representation in the US House so that their share of seats is now disproportionate to their vote share in several key states. With 26 state delegations controlled by Republicans, a contingent election would likely see Donald Trump take the White House.*

*Remember, remember, the 5th of November, gunpowder, treason, and plot! So runs the English rhyme, recited still by children on Bonfire Night throughout the UK, commemorating Guy Fawkes' failed attempt to blow up the English House of Lords in 1605. In a modern twist, this November 5, the United States faces an election that many view with trepidation. Amid the election hoopla and hype to the tune of **billions** of dollars spent, an atmosphere of rising distrust pervades the democratic process. **Americans** and international observers alike worry that all is not as it should be in the "land of the free and the home of the brave".*

### Concerns about electoral integrity

The 2024 election has been overshadowed by dark concerns about the integrity of American democracy and the challenges to the democratic process. Following the infamous January 6, 2021 insurrection—an effort to halt the certification of Joe Biden's Electoral Votes—there are fears that bitter partisan rivalry may again seek to manipulate the certification process and exploit constitutional loopholes, like the **12th Amendment**, which allows the House to select the president if neither candidate secures an Electoral College majority. In this context, the role of gerrymandering—

a process of redrawing district boundaries to favour one party—is especially relevant, as it supports Republican control of the House, potentially positioning it to play a pivotal role in a contested election.

## Education and voter awareness

The *Voter Education, the Challenge of the Century* LSE public lecture on 4 October, saw the launch of *VoteDemocracy* a new global education initiative to develop the first comprehensive undergraduate course on the central role of voting in democracy. In support of the new project, Nobel laureates Amartya Sen and Eric Maskin spoke on democratic principles, emphasizing the need for voter education and voting reform. *VoteDemocracy*'s course curriculum includes analysis of representation, gerrymandering, and other voting mechanics to foster a deeper understanding of democratic procedures and problems—providing insight, for example, into how gerrymandering could impact the 2024 election if the House of Representatives is called upon to determine the presidency.

## The impact of gerrymandering

In states such as Texas, Ohio, and Wisconsin, the gerrymandering of the redistricting process has significantly boosted Republican representation in the House of Representatives by *packing*, that is, by cramming Democratic voters into fewer districts, or by *cracking* them—spreading them sparingly across Republican-majority areas. The resulting skewed distribution could be crucial in initiating the 12th Amendment's contingent election process. Key states where gerrymandering has reinforced Republican strength reveal stark mismatches between popular vote share and House seat distribution. Table 1 below shows the current extent of the gerrymandered mismatch from the mid-term elections in 2022:

Table 1 – Party seats and voter share in Wisconsin, Ohio and Texas

State	Republican Seats	Democrat Seats	Republican Vote Share	Democrat Vote Share
Wisconsin	6 (75 percent)	2 (25 percent)	51 percent	49 percent
Ohio	10 (67 percent)	5 (33 percent)	57 percent	43 percent
Texas	25 (66 percent)	13 (34 percent)	54 percent	46 percent



*“alMG\_5712” (CC BY 2.0) by Becker1999*

## The contingent election process and the disparity in representation

Were no candidate to reach the 270 Electoral College votes necessary for a majority, or if certification disputes were to arise, the gerrymandered increase in Republican representation in the House in states like Texas, Ohio, and Wisconsin could be crucial in determining whether the House should be called upon to resolve a deadlocked presidential election through the 12th Amendment’s *contingent election* procedure. This protocol outlines a process for resolving presidential elections when no candidate wins an Electoral College majority. In a contingent election:

1. The House of Representatives elects the president—each state delegation casts a single vote, and a candidate must receive a majority of state votes (currently 26).
2. The Senate elects the vice president—each senator votes individually, with a majority required to win.
3. Tied state delegations, currently Minnesota and Maine, being evenly split, would likely abstain from casting a vote if they could not reach a majority within their delegations.

The 12th Amendment’s single-vote-per-state rule in the House during a contingent election amplifies the representation gap between populous and smaller states. For example, California, with a population of 39.5 million and 52 House representatives, would have only one vote—the same as Wyoming, with some 580,000 residents and only one House representative. Sixteen smaller Republican-leaning states, with a combined population similar to California’s, could cast 16 votes in a contingent election, increasing Republican power relative to population size. A gerrymandered House majority may wield power in a way that disregards the popular vote if a contingent election is triggered. The current House of Representatives would comprise 26

Republican delegations, 22 Democrat, and 2 tied. It is most likely that in such a split of representatives, Donald Trump would be elected under the 12th Amendment's contingency election.

A contingent election also raises the bizarre possibility of electing a president and vice president from different parties, an outcome that could result in a split executive: Harris/Vance or Trump/Walz. This could happen if the Republican-led House selects a Republican president, while a Democrat-controlled Senate (if the party is able to hold the chamber in the election) elects a Democratic vice president. A divided executive would face significant governance challenges.

## Pathways to a contingent election in 2024

If key battleground states face certification disputes or if partisan actors block certification, the election may fall to the House for resolution. The new Congress, including a Republican- House shaped by gerrymandered districts if they retained the majority on November 5th, would preside over the process. Thus, the impact of gerrymandering could be felt far beyond routine representation, influencing the very selection of the president in a contested partisan scenario.

## The 2021 Insurrection as a precursor

The January 6, 2021, insurrection could be seen as a forewarning for 2024. In the aftermath of the 2020 election, former President Trump and his allies **lost** 61 of the 62 lawsuits they filed alleging voter fraud in the swing-states of Pennsylvania, Michigan, Georgia, Nevada, Arizona, and Wisconsin. He was also the subject of a **four-count indictment** on felony charges for conspiring to fraudulently overturn the 2020 election. Despite these failures, the strategies employed then could be more finely honed for the current election.

As Georgetown professor Neal Katyal **notes** in a recent *New York Times* essay, "The rogues are no longer amateurs. They have spent the last four years going pro, meticulously devising a strategy across multiple fronts—state legislatures, Congress, executive branches, and elected judges—to overturn any close election." Yet, despite widespread acknowledgment of the issue, the influence of gerrymandering in tipping the scales remains rarely discussed.

- *When appropriate funding/sponsorship has been secured, the **VoteDemocracy** course will be available to download free on Open Access.*
- *Watch the **podcast and video recording** from the 4 October LSE public event, *Voter education: the challenge of the century**
- ***Please read our comments policy before commenting.***
- *Note: This article gives the views of the author, and not the position of USAPP – American Politics and Policy, nor the London School of Economics.*
- *Shortened URL for this post: **<https://wp.me/p3I2YF-etQ>***

## About the author



**Rudolf Fara**

Rudolf Fara is co-founder and Project Leader of Voting Power and Procedures, and Director of its VoteDemocracy project in CPNSS at LSE. He is co-editor of the VoteDemocracy course-book by Springer (forthcoming) and director of the accompanying video course, a groundbreaking production 'by students, for students'. Fara created the Video Library of Philosophy archive, and co-founded the world's first publisher of academic media on computing.

**Posted In:** Elections and party politics across the US



© LSE 2024