

Tail Risks for 2024: Prospects for a Violent Constitutional Crisis in the United States

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Introduction

Donald Trump's attempt to overturn the results of the 2020 election, culminating in the January 6th, 2021 uprising, have left grave questions about the next presidential contest in 2024 and the prospects of a renewed crisis. Where do those risks stand in the wake of the midterms and the resulting power struggle in the U.S. House of Representatives? Ultimately, the overall danger has declined. But deeper challenges remain. In particular, this note analyzes the paths to a constitutional crisis leading to large-scale political violence.

- I propose four criteria for a violent constitutional crisis in 2024: an election-disputing presidential candidate; armed actors prepared to support that candidate's claims of fraud; widespread popular belief in those claims; and an apparently viable tipping point for extraconstitutional pressure.
- The first two criteria will likely be met in 2024. The midterms have not changed much in this regard.
- The most worrying scenario for a constitutional crisis in the 2024 elections is one in which the crisis focuses on a single state on which the result of the election hinges. The odds have receded given the midterm results, but are still present.
- If several states separate the two candidates, a constitutional crisis in 2024 could still occur but would likely be less difficult to resolve than a single-state crisis.
- Election denialism is still well-entrenched in the Republican Party, and has received a significant boost (even if not as much as anticipated) now that the GOP controls the US House of Representatives.

A violent constitutional crisis in 2024: four criteria

What are the prospects for a violent constitutional crisis in the United States in 2024? What I mean here is an episode in which the outcome of the presidential election is disputed by key political actors, and armed groups use or threaten violence to influence how the dispute is resolved. I hasten to add that it seems likely someone *will* dispute any Democratic Party victory to at least some degree. The issue here is really how bad a crisis could get. Is it a matter of a few

cranks challenging a result but not taken seriously outside? Or is it a repeat of January 6th, 2021, but worse—with large-scale demonstrations, militias mobilizing and the outbreak of violence? And in particular, could such a crisis draw in security personnel? A severe crisis is a tail risk—unlikely but realistic enough to take seriously.

A good starting point would be to consider what could lead to a "[revolutionary situation](#)", in Charles Tilly's terms: one in which there are two claims to sovereignty at the same time, mutually opposed and with enough support to call the existing order into serious doubt. In the American case, this takes four things:

- two Presidential candidates claim victory in an election, that is, the apparent loser refuses to concede (the claim to sovereignty);
- armed actors support this claim of victory (i.e. the potential for violence);
- the claim looks plausible to a significant portion of the population (i.e. changing the incentives of political elites and nonviolent activists, and providing the cover of democratic politics for insurrection);
- it appears viable to overturn the result through a tipping point, such as pressure on a small number of people (meaning that insurrectionary action could look like a winning strategy).

These conditions held, to at least a limited degree, on January 6th, 2021. Trump had refused to concede; most Republicans believed that Biden's victory was illegitimate, though there was a widespread consensus in the press and among independents that Biden had won; Trump had the support of militia such as the Oath Keepers and the Proud Boys; and the strategy on January 6th was to pressure Congress and Vice President Mike Pence not to accept the result. This was a farfetched hope, but it is uncertain what would have happened had Pence bowed to the pressure.

Continued Risks: Denialist Candidates, Violent Support

For 2024, the first two conditions remain plausible. First, it is likely that the Republican nominee would dispute a loss. That nominee may very well be Trump again, though [polling](#) and [focus groups](#) suggest GOP voters may be moving on. As for Florida Governor Ron DeSantis, whom many believe has gained a major advantage over Trump with the midterms, he [refuses](#) to concede that Biden won the election fairly and courts denialist support. He does not do so nearly as vocally as Trump himself, and his support for denialism may simply be a strategic way of courting Trump supporters while offering a more palatable alternative. But being willing to deny the legitimacy of an election for personal gain suggests that, in comparison to a John McCain or Mitt Romney, it would be hard to have confidence that DeSantis would concede in the event of defeat.

As for the second condition, violent actors, it appears true that investigations and prosecutions have done serious damage to militias. Most notably, Oath Keepers leader Stewart Rhodes was [convicted](#) in November 2022 of seditious conspiracy. This, the over 900 indictments issued against January 6th insurrectionists, and disillusionment with January 6th itself, have challenged the ability of some militia groups to [maintain themselves](#) as organizations. This marks a major change from the Trump Administration's comparative [lack of effort](#) to combat right-wing extremism, and as Daniel Byman argues, [bodes well](#) for 2024 compared to 2020.

However, right-wing extremist militia remain active. Guns are now a [common sight](#) at political demonstrations. The Armed Conflict Location and Event Data (ACLED) project found that right-wing extremist activity actually [increased](#) in 2022, compared to 2021. Moreover, it has coalesced into a smaller number of groups, suggesting greater levels of organization (though potentially more [vulnerability](#) to law enforcement).

In addition to the potential for violence from militia, we must take seriously the possibility of the involvement of law-enforcement or even military personnel in a crisis, through defection or refusal to oppose violent actors. Generally, military breakdowns become [much](#) more [likely](#) in countries where the rules of the political game are not well-established. In this respect, the [undermining of key democratic norms](#) before, during, and after the Trump presidency—refusing to accept an election result, calling for the jailing of political opponents and the use of violence at rallies, attempting to second the police and armed forces as political constituencies, and making key law enforcement and military appointments with an eye to personal loyalty—look ominous. They raise the possibility of partisan action by law enforcement or military personnel in the event of a constitutional crisis. If this happens, the crisis would become much more severe. Even if the large majority of personnel did their jobs and respected their oath to the Constitution (as is highly likely), the firepower of insurrectionists could increase a great deal with relatively small-scale security-force breakdowns.

Unfortunately, such a breakdown remains a possibility, if a remote one. Extremist groups [actively](#) (and [increasingly](#)) [recruit](#) serving and former police and military personnel. This still means that relatively few active-duty police officers and soldiers are also members of right-wing extremist organizations. The Department of Defence has [taken some steps](#) to address the problem, focusing on updating its definitions of prohibited activities and improving training and data collection (necessary, but [progress](#) is [slow](#)). However, the potential for a breakdown goes beyond the radical fringe, because even ordinary partisans may be willing to act on denialism. After all, Republicans [do not have to be extremists](#) to [believe](#) that Joe Biden is an illegitimate President. In turn, studies of US service personnel reveal that they [increasingly identify as partisans](#) and increasingly believe that it is [acceptable](#) for them to engage in partisan political activity, while at the same time civilian politicians (not least [Trump himself](#)) have [increasingly attempted](#) to use the armed forces at the service of partisan politics. Law enforcement personnel [appear willing](#)—at a very high rate—to pose their own authority against federal and state law. In a crisis in which many partisans believe the election is being stolen and that it is therefore unclear who legitimately holds executive power, chains of command in the police and armed forces (if deployed) could suffer.

Crisis in a single state: a less-likely but still possible scenario

Republican denialism in 2024 may thus have both willing leaders and followers. Will it be a viable strategy? It is here that the midterms have had an impact. One key shift is in the fourth criterion for a crisis, the plausibility of overturning the result through concerted action at a tipping point. This is especially likely in a 2024 election with a margin of a single state. In such a scenario, a Republican claim to be the real winner will look more plausible than if the margin were several states wide. Moreover, a few state-level officials could be pressured to throw doubt on the result, drag the process out, push alternate electors and shift the contest to friendly courts or to the US House (which decides elections in the absence of an Electoral College majority). The state in

question would likely become a focal point for political mobilization, demonstrations, and militia deployments. The longer the result drags out before there is clarity, the more people will actually doubt any apparent result (the third criterion for a crisis); and the more protests, riots and militia will have a chance to activate.

Here, the midterms have had a significant impact. Above all, with the [defeat](#) of most [election-denying candidates](#) for election-administering offices in key battleground states, a constitutional crisis concentrated in one of those states now looks less threatening. This was an especially [worrying scenario](#): a Secretary of State in Arizona or Michigan, or a governor in Pennsylvania, abusing their power and mounting endless challenges to a Democratic victory in that state (and thus the Presidency). These officials have the [means](#) to [disrupt and delay](#) certification of election results. In a narrow election with an apparent Democratic victory by a margin of one state, these officials would then be in a position to [throw the result into doubt](#) in a concrete way.

The most blatant election-denying candidates for key election-controlling offices in battleground states went down to defeat in November's midterms. I base this assessment on the seven states with a margin less than 3% in the 2020 election, and assessments of denialism by the [New York Times](#) and the [United States Democracy Center](#). Other election-deniers [won elsewhere](#), but they are in states any Republican would likely win regardless.

There remain some concerns in some very close states. The new governor of Nevada, Joe Lombardo, took a somewhat [ambiguous stance](#) on Biden's victory but will be checked by a Democratic Secretary of State and Attorney General. In North Carolina, though there was no state executive election and the key offices remain in Democratic hands, twin Republican victories have tipped the state Supreme Court. This is crucial for the results of the election there. The court, in February 2022, rejected an flagrantly gerrymandered electoral map [by a single vote](#). It has now ordered a [rehearing](#) of that case, and a second about voter identification. In other words, the North Carolina Supreme Court is plainly willing to play a partisan role.

The good results for democracy do not totally remove the scenario of a crisis in a focal-point state. If it appears that the Democratic candidate is in the lead in a hinge state after election day, it is highly likely that election-denying Republicans will kick into high gear even if there are not election deniers in local election-administering offices. They can throw the result into doubt through relentless public discourse, mount legal challenges to it, and exert pressure on GOP state officials and the state judicial system to play along. Demonstrators and militia could well mobilize to add to the pressure through intimidation and even violence. The crisis scenario outlined above could still occur.

With that said, however, election-deniers' losses in 2022 remove some critical tools to delay the confirmation of the result, to throw it into official-sounding doubt, or to kick the decision to friendly courts. The shorter the length of time before a Democratic victory is publicly confirmed by election officials and the courts, the likelier it is that such an escalation would be nipped in the bud, and that these election-denying actors would effectively concede and go home. The losses among election-denying officials are thus clearly good news for avoiding violent constitutional crises.

General denialism means a crisis remains on the table

On the other hand, election denial now has a more general purchase in American political life. It will have a [major role](#) in the Republican-controlled House of Representatives (and with that in mind, it is hard to conclude that the midterms were an unalloyed victory for democracy; it beat expectations, but those expectations were low). During the many ballots for Speaker, Kevin McCarthy (California) caved into the most extreme GOP demands. Formerly fringe figures like Rep. Marjorie Taylor Greene (Georgia)—who has [said](#) that had she been in charge of the January 6th insurrection, it would have been armed and it would have won, and who has called for a “[national divorce](#)” among Republican and Democratic states—will receive major airtime to push the Big Lie that Trump won in 2020. After the fight for the Speakership, Rep. Greene is now [very close](#) to McCarthy, and her seats on the Committees on Homeland Security and on Oversight and Accountability give her a platform for disruptive action.

Election denial is now [more powerful](#) among Republican members of Congress than it was in 2020. Election deniers will be able to use and abuse the investigative and oversight roles of House committees to push a narrative of Democratic corruption. Most dramatically, the House has now created a [committee](#) to investigate the “weaponization” of the federal government, claiming the power to subpoena Department of Justice documents on ongoing investigations and highly classified materials. Rep. Jim Jordan (Ohio), chair of both this committee and the House Judiciary Committee, played a prominent role in Trump’s attempts to dispute the election. This move therefore raises the worry of using the committee to obstruct DOJ investigations into insurrectionary activities. The DOJ has [strongly resisted](#) Congressional interference in ongoing investigations in the past, but it is unclear how the inevitable legal dispute will be resolved. One way or another, however, the new Jordan committee exists to push the narrative of the illegitimacy of the Biden Administration and its use of power. The midterms, in other words, have given Congressional power to election denial.

It is still worth asking whether the unexpectedly poor results for the GOP will change the Republican strategy with regard to denial. Many of the losing candidates who had denied the 2020 elections [conceded their defeat](#). This suggests that denying Biden’s victory was in some cases more of a tactic to appease Trumpists than an antidemocratic conviction (but that is not much solace, and people like defeated Arizona gubernatorial candidate Kari Lake can still build their national profile through denying their results). There were [threats](#) and [disruptions](#) to the electoral process, but not nearly [as many as feared](#); efforts to challenge the results [fizzled out](#). The GOP mood in the aftermath of the election was one of [dejection](#) (which implicitly accepts its defeats) rather than denial of the midterm results themselves. There is prima facie [evidence](#) that denialism itself hurt the Republican Party, particularly at the margins. By my count, of the 50 House races rated by FiveThirtyEight.com as [most competitive](#), there were 19 Republican election deniers as defined by the *Washington Post*; three won. This compares badly to the 31 Republican non-deniers, of whom 14 won. Some voices have emerged against Trump in the Republican Party, regarding him—and potentially denialism, which focuses on him—as an electoral drag. This may augur a turn against denialism. This will be important to watch: if the Republican Party starts believing that Trumpist denialism will [hurt more than help](#) and adjusts its rhetoric and nominations accordingly, many of the underlying drivers of a possible constitutional crisis will recede.

However, other factors indicate that denialism will continue to drive the Republican Party for some time. Republican support for the January 6th insurrectionists has [increased over time](#). Only 22% of Republicans, as of October 2022, [agreed](#) that Biden was legitimately elected; only 40% have [confidence](#) that votes are accurately cast and counted. Analysis of these results [suggests](#) that, while these views are most present among especially ideologically driven Republicans, simply being a Republican is a strong predictor of 2020 election denialism even among moderates. This is possibly related to a similar finding, that living in a heavily Republican district is a strong predictor of denialism—an [echo-chamber](#) phenomenon. These findings do not lead to optimism about denialism’s decline. Indeed, far from concluding that denialism was a losing strategy, the GOP has proposed [leaning even further into election fraud claims](#).

This all means that even without a single-state margin in 2024, a constitutional crisis is still possible. The election-denying machine will likely start rolling in the case of any presumptive Democratic victory. Many Republican voices would likely call the result into doubt, spinning out all manner of conspiracy-minded scenarios in the states separating the two candidates. With a margin wider than one or two states, however, these doubts would be all the more farfetched than in the case of a single-state margin. Moreover, extremist actors would potentially lack a clear tipping point to target; legal reforms have now [clarified](#) the Vice President’s role and raised the threshold for members of Congress objecting to a state’s slate of electors.

American democracy is still under threat

I have focused largely on a crisis in 2024 in which the GOP disputes a Democratic victory and a violent constitutional crisis emerges. However, outside of this scenario, democracy can erode in many other ways. Republican-held state legislatures are still passing bills to limit the right to vote, notably to Black Americans and other predominantly Democratic constituencies. The conservative-dominated Supreme Court could, in its ruling on the key *Moore v. Harper* case, approve the Independent State Legislature theory. Some fear that this theory would give a state legislature the power to overturn an election result by naming a new slate of electors, but this is [highly doubtful](#), since states must still comply with federal law on the matter and Congress has now closed the loophole creating this scenario. However, *Moore v. Harper* creates other problems. Specifically, the Supreme Court could make partisan gerrymandering nonreviewable by state courts (it has already ruled that the federal constitution does not prohibit such manipulations). This would create [new openings](#) for state legislatures in Wisconsin or North Carolina to lock in Republican majorities. Finally, it is still entirely possible for a Republican candidate to outright win an election in 2024, particularly with the playing field as tilted as it is. Especially if that candidate is Trump, there is reason to suppose he would use his Presidency with greater determination to entrench his power, for example through [targeting journalists](#) or promoting loyalists in the executive (as he [did](#) towards the end of his last term).

Democratic stability in the United States therefore had a better night on November 8th, 2022, than many had feared. It is not out of the woods.