GERRYMANDERING THE ELECTORAL COLLEGE RUNS AFOUL SECTION 2 OF THE FOURTEENTH AMENDMENT

Mark Bohnhorst[*]

Henry S. Noyes' recent argument that states are free to gerrymander the Electoral College, and his prognostication of an inevitable race to the bottom by many states to do so, identifies yet another potential threat to American democracy. This essay argues that the threat is not quite as serious and irremediable as Noyes posits. As Michael L. Rosin has shown, the unit district system—the most extreme version of a gerrymandered system—is unconstitutional under Gray v. Sanders. But that leaves gerrymandering traditional districts, as well as the possibility of switching from winner-take-all to a district system late in the game, either of which has the potential to throw an election to the minority candidate.

This essay argues that any system of gerrymandering the Electoral College abridges the right to vote for electors in violation of Section 2 of the Fourteenth Amendment, and that Congress has the power to forbid it. Further, as argued at some length elsewhere, dealing with gerrymandering is not hopeless. Because our current system of automatic reapportionment does not comply with Section 2 of the Fourteenth Amendment, that system is also unconstitutional. Not only can a court declare it unconstitutional, but the next president has the authority to stop the redistricting process until the political branches —Article I plus Article II—agree about how to remedy a practice that was characterized at the founding as "corrupt" and "unjust."

* Retired public sector attorney, independent researcher, and author. Mr. Bohnhorst is an author of four articles on presidential election history and law (including on Section 2 of the Fourteenth Amendment). For Mr. Bohnhorst's most recent publication, see Mark Bohnhorst, *Revisiting Section 2 and the Electors Clause: On the Right of the People to Choose Presidential Electors*, 102 DENV. L. REV. 967 (2025). He extends sincere thanks to Michael L. Rosin for a critical review of the manuscript. He bears sole responsibility for any errors or misjudgments. Support from the University of Minnesota, Office of the Provost (Professional Development Grant for Retirees, administered by the University of Minnesota Retirees Association) is gratefully acknowledged.

In the summer 2026 issue of the Marquette Law Review, Henry S. Noyes characterizes as legally "bulletproof" a model state law that creates a unit system with highly gerrymandered Electoral College districts that grants all of the state's Electoral College votes to the winner of the majority of those districts.[1] In a reply to this suggestion,[2] Michael L. Rosin demonstrates that, far from being bulletproof, Noyes' system is unconstitutional under *Gray v. Sanders*, which explained that "[o]nce the geographical unit for which a representative is to be chosen is designated, all who participate in the election are to have an equal vote."[3] This essay explores separate flaws in Noyes' thesis and implications that extend beyond the unit system. Fundamentally, Noyes overlooks the "abridgement" clause of Section 2 of the Fourteenth Amendment; and his proffered system, like gerrymandering of other elections listed in Section 2, is an unconstitutional abridgement of the right to vote.[4]

1. THE GENERAL PROBLEMS OF DISTRICTING AND GERRYMANDERING THE ELECTORAL COLLEGE

We begin with the general problems of districting and gerrymandering. Noyes' unit system is a special case, for it can be invalidated on one-person-one vote grounds without reaching the question of gerrymandering. The general problem is that gerrymandering might be used to supercharge traditional district systems, which allocate one electoral vote to the winner of each district and pass muster under one-person-one-vote. If the districts in such systems have been severely gerrymandered, the gerrymandering might decide a presidential election against the will of the majority of the voters.[5]

Yet districting alone, even without gerrymandering, could do the same. Use of any type of district system implicates a fundamental problem with the Electoral College. If some states elect by districts and others use winner-take-all, the majority candidate in a state that uses districts is disadvantaged by receiving only some of the votes instead of all the votes, which the candidate would garner under winner-take-all. This is an old problem. As Thomas Jefferson recognized in 1800, "[t]his is, in fact, ensuring to our minorities the appointment of the government [of the president]."[6] For two centuries—with the exception of Michigan in 1892 and Maine and Nebraska currently[7]—politicians have avoided the

1. Henry S. Noyes, *Gerrymandering the Electoral College*, 109 MARQ. L. REV. 1447, 1451 (2026).

2. Michael L. Rosin, *A State May Not Use a District Unit System to Elect Its Presidential Electors Having a Statewide Constituency: A Response to Noyes' Gerrymandered Electoral College*, 2026 U. ILL. L. REV. ONLINE 78 (2026).

3. Gray v. Sanders, 372 U.S. 368, 379 (1963).

4. Noyes, *supra* note 1, at 1452–56 (reviewing all constitutional provisions relating to voting for electors; stating question under Section 2 of the Fourteenth Amendment is whether Section 2 creates a right for the people, rather than state legislatures, to vote for electors; overlooking the questions of whether gerrymandering under any system abridges the right to vote in violation of Section 2).

5. Rosin, *supra* note 2, at 80.

6. *Thomas Jefferson to James Monroe,12 January 1800*, *in* 31 THE PAPERS OF THOMAS JEFFERSON 300–01 (Barbara B. Oberg ed., 2004).

7. Noyes, *supra* note 1, at 1457, 1461.

problem by opting for winner-take-all. Yet, if a party that controls a state's government anticipates its opponent may win the upcoming state-wide vote for president, a last-minute switch to a district system might be an attractive option. In a world where traditional guardrails have been abandoned, where unheard of mid-decade redistricting and last-minute changes have become the rage, the winner-take-all precedent of two centuries might not hold.[8] The system of old has become unstable, and gerrymandering, which adds to the incentive to change systems at the last minute, makes it more so.

2. THE POLITICAL BRANCHES MAY, AND SHOULD, DETERMINE THAT POLITICAL GERRYMANDERING IS AN UNCONSTITUTIONAL ABRIDGEMENT OF THE RIGHT TO VOTE FOR ELECTORS.

Noyes seems to take as a given that, because political gerrymandering is non-justiciable, it is beyond legal challenge, at least so long as districts are equal in population (and gerrymandered for political rather than racial reasons).[9] This assumption is unsound on several grounds. Fundamentally, *Rucho* did not rule that gerrymandering is legal, only that the decisionmaker regarding what is "legal" and what should be done about any illegality will be the political branches, not the Supreme Court.[10] Since the answer to this "political question" is beyond the competence of the judiciary, the political branches are not bound by the prior utterances of the Court, which turn out to have been dicta.[11]

Even so, multiple justices have either opined or assumed that political gerrymandering is unconstitutional. Indeed, even the *Rucho* majority acknowledged that political gerrymanders can reasonably be considered "incompatible" with democratic principles and "unjust."[12] In forming their own judgments about the legality of gerrymandering, the political branches are free to embrace the dicta of justices who are deeply troubled by gerrymandering.

Beyond that, turning to Section 2 itself, the Supreme Court has never interpreted the phrase "in any way abridge."[13] The Court has explained that "abridged" nullifies "'sophisticated as well as simple-minded modes'" of impairing the right to vote[14]—and "in any way abridged" goes even further.

One begins with use of "abridged" elsewhere in the Constitution. In the Bill of Rights, "abridged" is the verb that protects the core political rights of the

8. *See id.* at 1485.

9. *See id.* at 1451, 1487–88, 1495–96.

10. Rucho v. Common Cause, 588 U.S. 684, 721 (2019).

11. *See id.*

12. Noyes, *supra* note 1, at 1476 (referring to statements in *Rucho* as "pearl clutching"); *but see* Rucho v. Common Cause, 588 U.S. 684, 732 (2019) (Kagan, J., dissenting) ("[N]early all [Justices] have agreed on this much: Extreme partisan gerrymandering (as happened in North Carolina and Maryland) violates the Constitution [citing opinions of Justices Kennedy, Breyer and Powell]."); Louisiana v. Callais, 608 U.S. 85 (2026) (Kagan, J., dissenting) (stating the *Rucho* Court "conceded that [political gerrymanders] were 'incompatible with democratic principles' and 'lead[] to results that reasonably seem unjust'").

13. *See* Franita Tolson, *What Is Abridgment? A Critique of Two Section Twos*, 67 ALA. L. REV. 433, 436 (2015).

14. Harman v. Forssenius, 380 U.S. 528, 540–41 (1965).

people—the "freedoms" of speech and of the press, and the "rights" to peaceably assembly and petition for redress of grievances.[15] The leading dictionary of the era defined "abridge" to mean to "diminish," and it cited John Locke's use of the term in connection with any diminishment of the exercise of free will, which is "that power wherein liberty consists."[16]

Thus "in any way abridge" means any diminishment in any way, and the phrase may reasonably be understood to incorporate the greatest possible protection for this crucial right and power, "wherein liberty consists."[17] This reading is bolstered by Justice Harlan's view that Section 2 was expected to bear the full burden of protecting voting rights.[18] Given that expected role, "in any way abridge" should be read broadly.

Looking to constitutional history, the political branches may reasonably conclude that "in any way abridge" incorporates a broad antebellum prohibition of partial or class laws that underlies the Equal Protection Clause itself. Turning to the history of that clause, Melissa L. Saunders has shown that there is "considerable evidence" that the Republicans who drafted and ratified the Fourteenth Amendment intended the Equal Protection Clause to incorporate a modified version of the antebellum precedent that had been developed in state courts.[19] Under the prohibition of class legislation, a law that burdened a class, and that could not be justified as serving the broad public interest, was deemed unconstitutional.[20] The doctrine was embraced by northern Jacksonian Democrats for decades, and abolitionists adapted it in service to their own cause.[21] Saunders explains how the Equal Protection Clause can be seen as a compromise between the conservative/moderate and progressive arms of the Republican Party.[22] Favoring the progressive/abolitionist arm, unlike the antebellum precedents, the compromise extended the concept to protect the freedmen.[23] Favoring the conservative/moderate arm, unlike several proposals considered and rejected as the Fourteenth Amendment worked its way through Congress, the compromise did not expressly prohibit all consideration of race.[24] Further, Saunders demonstrates

15. U.S. CONST. amend. I.

16. SAMUEL JOHNSON, DICTIONARY OF THE ENGLISH LANGUAGE 1 (6th ed. 1785) (stating "abridge" means "[t]o contract, to diminish, to cut short[,] . . . to deprive of"; stating that an example of "abridge" being used, citing Locke, is as follows: "The determination of the will, upon enquiry, is following the direction of that guide; and he that has a power to act or not, according as such determination directs, is free. Such determination *abridges* not that power wherein liberty consists."; stating "abridgement" means "[a] diminution in general"; stating that an example of "diminishment" being used, citing Donne, is as follows: "All trying, by a love of littleness, to make *abridgements*, and to draw to less, even that nothing, which at first we were.")

17. *See id.*

18. Mark Bohnhorst, *Revisiting Section 2 and the Electors Clause: On the Right of the People to Choose Presidential Electors*, 102 DENV. L. REV. 967, 976–78 (2025) [hereinafter *Revisiting Section 2 and the Electors Clause*].

19. Melissa L. Saunders, *Equal Protection, Class Legislation, and Colorblindness*, 96 MICH. L. REV. 245, 292–93 (1997).

20. *Id.*

21. *Id.* at 251–68.

22. *Id.*

23. *Id.* at 267–68.

24. *Id.* at 292–93.

that the Supreme Court then incorporated the antebellum principle (as modified) into its Equal Protection jurisprudence.[25]

The antebellum precedents are consistent with Justice Harlan's view that the drafters and ratifiers of the Fourteenth Amendment intended the Equal Protection Clause of Section 1 to protect only civil rights and not political rights.[26] Yet, there is no reason to think the Republicans who drafted and championed Section 2 intended to exclude the broad principle of equal laws from the section that unquestionably does protect political rights. The compromises underlying the two provisions are similar and were proposed simultaneously. In section 2, as in the Equal Protection Clause, Congress ultimately rejected proposals framed narrowly in terms of race in favor of a broad principle, the principle of universal suffrage.[27] And Section 2, like the Equal Protection Clause, did not prevent a state from considering race—indeed it expressly allowed such consideration for a state that was willing to pay the political penalty that Section 2 imposes on any state that abridges the right to vote in any manner. Since the central point of the penalty was to induce states to treat the freedmen equally, it is more than reasonable to interpret the trigger for that penalty—"in any way abridge"—to include class-based laws that do not serve a legitimate public purpose, as well as facially neutral laws that have the effect of abridging the individual's right to vote. Indeed, the Fifteenth Amendment clearly bars class-based abridgement of the right to vote when the class is race. It's predecessor, Section 2, can be read to embody the same principle of "no class-based discrimination" as a universal rule, without the limitation of race.

Understandably, Noyes cites *Rucho* and the Supreme Court's one-person-one-vote cases for the proposition that the gerrymandered districts comply with applicable standards for not diluting or otherwise violating the rights of individual voters, each of whom has an equal right to vote and all of whose votes are given equal weight.[28] As Melissa Saunders shows, however, the current Court has forgotten the origins of the Fourteenth Amendment.[29] The question is not solely whether each vote has equal weight; it is also whether the system as a whole is designed to burden a disadvantaged class. Indeed, in one of the Supreme Court's early political gerrymandering cases, six of the six justices who reached the issue wrote that a claim that gerrymandering violated the rights of members of the Democratic Party *as a class* stated a justiciable claim under the Equal Protection Clause.[30] The political branches are entitled to recall the origins of the

25. *Id.* at 293–301.

26. *Id.* at 270 (stating few believed the concept should extend to political rights); *Revisiting Section 2 and the Electors Clause*, *supra* note 18 at 976–78 (discussing Professor Van Alstyne's critique of Justice Harlan's views).

27. Saunders, *supra* note 19, at 275–81 (showing that changes from race-specific to universal terms were made simultaneously).

28. Noyes, *supra* note 1 at 1481, 1495–96.

29. Saunders, *supra* note 19, at 309–27.

30. Davis v. Bandemer, 478 U.S. 109 (1986)(finding a claim that a state-wide gerrymander both intentionally sought to discriminate against a political party, and that it had a discriminatory effect, is justiciable (six Justices); *id*. at 129—37, Justice White for four Justices (finding that plaintiffs had not met their burden of showing the gerrymander will consistently degrade the voters' influence in the political process as a whole); *id*. at

Fourteenth Amendment, along with the views of a prior majority of the Supreme Court, and ~~to~~ craft remedies for the "corrupt" and "unjust"[31] class-based wrong of political gerrymandering for all elections listed in Section 2.

3. REMEDIES FOR UNCONSTITUTIONAL ABRIDGEMENTS OF THE RIGHT TO VOTE FOR ELECTORS EXIST.

As argued elsewhere,[32] one of those remedies is not to proceed with a new apportionment under an unconstitutional apportionment system that ignores Section 2—until the political branches have agreed about how to correct the underlying constitutional wrong. To best knowledge, this idea has not previously been published or discussed, so a summary is in order. The underlying point, which is elaborated upon above, is that gerrymandering is an abridgement of the right to vote under Section 2.

Section 2 is most salient during the reapportionment process. The historical precedent of the 1920s, when there was no reapportionment, is of utmost importance.[33] One reason there was no reapportionment is that the political branches could not agree about enforcing Section 2 of the Fourteenth Amendment. Proponents of enforcing Section 2 railed against the widespread disenfranchisement of Blacks in the Solid South. Southern Democrats replied with defiant rhetoric grounded in white supremacy. At the end of the decade, there was a compromise—a disgraceful compromise—which turned a blind eye on Section 2 and led to today's automatic reapportionment system that continues to pay no heed to Section 2. The compromise was reached only after a majority vote in the House of Representatives called for enforcing Section 2 and after the lead proponent of doing so declared that the compromise amounted to a nullification of the constitution.[34]

Thus, one begins with the proposition that the current reapportionment system was grounded in a capitulation to racism. What can be done today? In 2018 Gerard N. Magliocca pointed the way in an aptly titled article, *Our Unconstitutional Apportionment Process*.[35] Magliocca pointed out that Supreme Court precedent allows states that stand to lose seats in the House (and corresponding Electoral College votes) to mount constitutional challenges to the reapportionment process.[36] He suggested that aggrieved states do just that, but in a limited

161—85, Justice Powell for two Justices (finding plaintiffs had met their burden; and *id*. at 144–61, Justice O'Connor for three Justices (finding that political gerrymandering is a nonjusticiable political question).

31. Mark Bohnhorst, On Section 2 of the Fourteenth Amendment, Partisan Gerrymandering, and Protecting the Right to Vote (Oct. 4, 2026) (unpublished manuscript) (on file with author) (citing criticisms of unequal legislative districts at the Virginia ratifying convention by William Grayson ("corrupt") and James Madison ("unjust")) [hereinafter *On Section 2*] https://papers.ssrn.com/sol3/papers.cfm?abstract_id=7467081.

32. *Id.* (Sections IV.B, IV.CD.

33. *Id.* (Sections III.C).

34. *Id.* (Section III.B).

35. Gerard N. Magliocca, *Our Unconstitutional Reapportionment Process*, 86 GEO. WASH. L. REV. 774 (2018).

36. *Id.* at 778.

way.[37] It would be sufficient to request that the courts declare the current system unconstitutional, after which it would be up to the political branches to determine how to fix it. A limited judicial remedy of this type might be allowed under *Rucho. Rucho* decided that the courts are not competent to decide where to draw the line; however, it might not foreclose a challenge to the automatic reapportionment system itself.[38] Yet, the court also might decide that it lacks jurisdiction over all challenges relating to political gerrymandering.[39] If a court exercised jurisdiction and sided with plaintiff states, the effect would be the same as the 1920s—reapportionment would not happen until the political branches fix the problem of excessively partisan gerrymandering.

If the courts did not exercise jurisdiction, or if suit was not filed (e.g., due to an assessment that the courts do not have jurisdiction), the President could achieve the same result by declining to issue the apportionment statement that the current unconstitutional system requires.[40] The President's authority to do so is implicit in Supreme Court decisions that discuss presidential discretion regarding the census and reapportionment,[41] and it is bolstered by the President's obligation to take care that the laws (and the Constitution) be faithfully executed. Indeed, presidential action to comply with the Constitution would advance one of the central purposes of the Framers of Section 2 and of the Fourteenth Amendment writ large—to create a new type of constitutional politics that secures power for those who are loyal to the purposes of the Civil War.[42] Assuring that the right to vote is not abridged in any way—and that ours will remain a nation of the people, by the people and for the people—was among those purposes.

4. THE STATES AND STATE LEGISLATURES DO NOT HAVE UNLIMITED DISCRETION REGARDING THE MANNER OF APPOINTING PRESIDENTIAL ELECTORS.

Nowhere does Noyes address whether gerrymandering abridges the right to vote. Noyes states only (i) that there are two views of whether Section 2 creates a right for the people to vote for electors, (ii) that he agrees with the view that it does not, but (iii) that he need not resolve the question because his gerrymandered unit system presupposes there are popular elections—thus, the issue of whether Section 2 confers a right to vote is irrelevant.[43] Thus, although Noyes cites some of the literature regarding Section 2, including this author's review of recent contributions to the field,[44] he does not engage with the question of whether gerrymandering abridges the right to vote.

37. *See id.* at 780.
38. Rucho v. Common Cause, 588 U.S. 684, 721 (2019).
39. *Id.* (Subsection IV.D.2).
40. *Id.* (Section IV.B).
41. *Id.* (Subsections IV.C.1, IV.C.2, IV.C.3.
42. MARK A. GRABER, PUNISH TREASON, REWARD LOYALTY: THE FORGOTTEN GOALS OF CONSTITUTIONAL REFORM AFTER THE CIVIL WAR (2023).
43. Noyes, *supra* note 1 at 1467–68.
44. *Revisiting Section 2 and the Electors Clause*, *supra* note 18, at 969–90.

Noyes' general discussion of arguments against the right of the people to vote for electors touches briefly on the era of vigorous debates in the states and in Congress in 1800 and from 1823-1826. Citing scholarship of Michael T. Morley and others and relying frequently on dicta in *McPherson v. Blacker* and dicta from *Bush v. Gore*,[45] Noyes articulates the view that the people have no constitutional right to vote for presidential electors and that Congress' power to restrict state action is extremely limited. This author strongly disagrees.[46] In addition to what has been said elsewhere,[47] one clear error and citation to a highly suspect source call for correction and attention

The error concerns a quotation from a speech by New York Representative Henry Storrs from the extended 1826 House debate on amending the Electoral College.[48] Storrs' statement referred to the possibility that a state legislature might assign the right to appoint electors to the board of a bank or synagogue.[49] Noyes presents this as evidence that state legislatures were understood to have essentially unlimited power over appointment of electors.[50] Yet Storrs took no such position. His speech opposed that argument, and the quoted language ridiculed it.[51] Four pages earlier, he said the claim that legislatures are entitled to appoint electors is "neither warranted by any fair construction of the Constitution, nor the spirit of the system."[52] Storrs' view was undoubtedly informed by the debate about constitutional history and law that had raged in his home state of New York for some 10 months, from June 1823 to March 1824.[53] State senators who blocked a bill that would have affirmed the rights of the people were burned and hung in effigy and saw their political careers end.[54] The chief advocate for the right of the people to elect—in the newspapers and in the New York

45. Noyes, *supra* note 1 at 1462–66, 1496, 1501; *cf*. *On Section 2*, *supra* note 30 (identifying Morley in Subsection IV.A.2 as the chief proponent of the Independent State Legislature Doctrine, referencing this author's critique of some of that scholarship).

46. *Revisiting Section 2 and the Electors Clause*, *supra* note 18, 990–1029 (arguing from a review of the Constitutional Convention, the ratification, and select state elections in 1800 and from 1823 to 1824, that the original constitution conferred the right to vote for presidential electors on the people). *See also* Robert J. Steinfeld, *The Forgotten History of the Electors Clause: The States Abandon Legislative Appointment of Electors as Unconstitutional*, 60 IND. L. REV. (forthcoming 2027) (same, including more extensive review of elections from 1799 to 1826); Mark Bohnhorst, Michael W. Fitzgerald & Aviam Soifer, *Gaping Gaps in the History of the Independent State Legislature Doctrine: McPherson v. Blacker, Usurpation, and the Right of the People to Choose Their President*, 49 MITCHELL HAMLINE L. REV. 257 (2023) (discussing both Section 2 and the original Constitution) [hereinafter *Gaping Gaps*].

47. *Id.*

48. Mark Bohnhorst, Reed Hundt, Kate E. Morrow & Aviam Soifer, *Presidential Election Reform: A Current National Imperative*, 26 LEWIS & CLARK L. REV. 437, 459–60, n. 71 (2022) (discussing debates in Congress in 1824 and 1826) [hereinafter *Current National Imperative*].

49. Noyes, *supra* note 1, at 1473.

50. *Id.*

51. *Gaping Gaps*, *supra* note 43, at 283 (citing Storrs' statement about directors of a bank or synagogue).

52. 2 REG. DEBATES 1401–02 (1826) (quoted in *Current National Imperative*, *supra* note 45, at 460, n. 71).

53. *Revisiting Section 2 and the Electors Clause*, *supra* note 18, at 1016–28 (recounting debate in New York).

54. *Gaping Gaps*, *supra* note 43, at 281; *Revisiting Section 2 and the Electors Clause*, *supra* note 18, at 1025.

Assembly—was a sophisticated constitutional lawyer, Henry Wheaton, who also served as the Third Reporter of the Decisions of the United States Supreme Court. Behind the scenes, in the last crusade of his life, was Eastman's friend, Senator Rufus King (New York), a Massachusetts delegate to the Constitutional Convention who served on more committees (6) than any other delegate,[55] including on the committees that drafted the Electoral College and that then put it (and the rest of the Constitution) into final form, and who then led the ratification effort in Massachusetts. Storrs clearly agreed with his fellow New Yorkers, Eastman and King.

The suspect source is South Carolina Senator Charles Pinckney, another delegate to the Constitutional Convention. Noyes quotes at some length from an 1800 speech, and he writes that Storr's speech "echoe[d]" Pinckney.[56] In a sense that is correct. Pinckney did espouse the view that Storrs ridiculed. Indeed, for Pinckney the Tenth Amendment affirmed that state legislatures had unlimited discretion to do whatever they wanted when it came to selection of electors. Pinckney missed the point, however, which the amendment's author, James Madison, had made only a few months previously, that "state" can mean "the people."[57] The Tenth Amendment[58] refers to the "States," not to their "legislatures;" and, as if to reinforce the point Madison made in 1800, it refers to powers "reserved to the States respectively, or to the people."

Pinckney is rather notorious for having suggested to James Madison in 1789 that election of the House by the people instead of by the state legislatures was "theoretical nonsense," for claiming to have been the most influential delegate at the Constitutional Convention (he did speak frequently, but he served on only one committee),[59] and for misrepresenting work of the Committee of Detail (on which he did not serve) as his own "plan."[60] The political branches need not be distracted by Pinckney's views. Remedies for gerrymandering federal and state legislative elections may be applied as well to any attempt to gerrymander the Electoral College.

55. PICKING THE PRESIDENT: UNDERSTANDING THE ELECTORAL COLLEGE 331–32, (Eric Burin ed., 2025) (containing "Resource 27: Delegates' Speeches, Motions, and Committee Assignments in the Constitutional Convention," showing King made 78 speeches, offered 22 motions, and served on 6 committees, more than any other delegate).

56. Noyes, *supra* note 1, at 1473–74.

57. *Gaping Gaps*, *supra* note 43, at 275–77 (discussing Pinckney's and Madison's statements and the Tenth Amendment).

58. U.S. CONST. amend. X ("The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.").

59. PICKING THE PRESIDENT, *supra* note 52, at 331–32 (showing Pinckney spoke often and offered many motions but served on only one committee).

60. *See* Lynn Uzzell, *The Deep South's Constitutional Con*, 53 ST. MARY'S L.J. 711 (2021); *see also Gaping Gaps*, *supra* note 43, at 263–64 n. 24 (citing "theoretical nonsense" letter and discussing Pinkney's misrepresentation concerning the "Pinckney Plan").

CONCLUSION

This author shares Prof. Noyes' alarm that democratic guardrails and principles have been set aside, particularly by one party, and that the system for electing the president is vulnerable to malign manipulation.[61] Yet, to this observer the chief dangers do not lie in the threat of gerrymandering the Electoral College. The people justly hate gerrymandering, and they have the power to end it. Either the Courts (if they have jurisdiction) or the President can hasten the process by stopping reapportionment until the political branches have acted.

The chief danger that I have identified, researched and written about since 2020 is the notion that state legislatures have "plenary power" over the appointment of electors and that the people have no right to vote for presidential electors, a notion that helped launch an assault on the peaceful transfer of executive power. Regrettably, Prof. Noyes' article lends some credence to that idea. Another danger is that partisan zealots may seize on the power to change the rules of the game very late in the process, in order to elect a president whom the people as a whole would reject. Both dangers point to the need for fundamental change, preferably by a constitutional amendment, perhaps, on an interim basis, by something akin to the proposed interstate compact that Noyes mentions.[62]

61. Noyes, *supra* note 1, at 1502–05.
62. Noyes, *supra* note 1, at 1504–05.