



Written by [Steve Byas](#) on June 27, 2018

## “Regulation Freedom Amendment” Targets Genuine Problem, Proposes Bad Solution

“The history of the American government is mostly about passing laws and electing presidents,” said Roman Buhler at a meeting of the Midland County (Texas) Republican Women in 2016. Buhler is national director of the Madison Coalition, with the stated aim of balancing state and federal power.



“The real turning points have been passing amendments,” Buhler added. “If we’re going to bend the way government works, we’re going to have to pass the Regulation Freedom Amendment.” Buhler argues that Congress would be forced to propose the Regulation Freedom Amendment if two-thirds of the states passed resolutions supporting it.

Several prominent conservative leaders and organizations are backing the proposed amendment, which is aimed at the problem of federal department and agency bureaucrats essentially creating law through the issuance of new more specific rules, supposedly just enforcing the broader laws passed by Congress.

Buhler contends that now is the time to push this amendment, because Republicans control legislatures in 33 states.

“People are already looking for solutions for the problem,” Buhler said at the time.

Now, in June 2018, Buhler has amassed an impressive list of supporters for his idea. The Republican National Committee (RNC) is backing his proposal. Former Reagan Attorney General Ed Meese and Vice President Mike Pence are for it. Resolutions supporting the idea have already passed 27 legislative chambers. In addition, the American Farm Bureau, the National Taxpayers Union, the American Legislative Exchange Council, Larry Pratt of the Gun Owners of America, and Federalist Society co-founder David McIntosh, and many others all support using Buhler’s concept to rein in the federal bureaucracy.

Without questioning the sincerity of anyone in this group, it should be said — clearly — that while they have correctly identified a serious problem, *the solution offered creates problems that might be worse than the disease.*

First of all, what are the particulars of the proposal?

The text of the proposed Regulation Freedom Amendment seems simple enough: “Whenever one quarter of the Members of the U.S. House or the U.S. Senate transmit to the President their written declarations of opposition to a proposed federal regulation, it shall require a majority vote of the House and Senate to adopt that regulation.”



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A resolution passed by the RNC gives us a good idea of what its supporters hope to accomplish. “Whereas, President Trump’s willingness to utilize the Congressional Review Act (CRA) has set a historic record for rolling back and repealing abusive regulations, thereby shrinking government and federal regulatory control” begins the resolution. The resolution goes on to stress the need for making the CRA, a statutory provision, permanent through a constitutional amendment, arguing this would keep a future Democratic Party majority from gutting it.

There is no question that the creation of law via federal rule-making violates the U.S. Constitution. Article I of the Constitution begins by stipulating, “All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.” (Emphasis added.) This leaves no law-making power for the president, the federal judiciary, or federal bureaucrats.

Buhler notes the “contrast between big-government progressives whose real goal is to empower unelected bureaucrats in Washington, and legislators on our team who want to take power away from Washington bureaucrats and return it to the states and the people.” He then offers his proposed Regulation Freedom Amendment as the solution.

The problem is real, but Buhler’s proposed solution is dangerous. Very dangerous.

### **What’s Wrong With the Regulation Freedom Amendment**

While the proposed constitutional amendment appears to take away power from federal bureaucrats, it really transfers legislative powers to them, leaving Congress even weaker than it is now. Note that the proposed amendment states that once one-fourth of either house informs the president of their declaration of opposition to a proposed federal regulation, it would then require a majority vote of the House and Senate to adopt the regulation. A surface reading sounds as though the federal bureaucrats are being reined in, but a closer analysis reveals that the present constitutional provision that Congress makes *all* laws has been altered: now, federal bureaucrats would constitutionally share that power with Congress. In fact, the proposed amendment effectively authorizes the bureaucrats in the executive branch of government to initiate and issue regulations that have the force of law — unless one-fourth of either House of Congress is proactive in blocking them in any particular instance.

The regulations that need to be eliminated are unconstitutional to begin with. This new amendment to the Constitution would, in effect, suggest that these bureaucratic rules are legal under the Constitution as it is now written.

Also, the regulation effectively legitimizes the regulations by constitutionally authorizing that major new regulations can be put into effect either by the executive branch without the approval of Congress, or by a simple majority vote of both houses of Congress, after one quarter of either house first expresses its disapproval. Of course, the Congress presently possesses no such constitutional power to approve unconstitutional legislation no matter how many members of Congress vote for it. Congress may only pass laws in the areas in which the Constitution grants them that power.

Another dangerous part of this effort is that, while the push is to get Congress to propose the amendment, support for such a proposal could potentially morph into support for a constitutional convention, were Congress to refuse to act.

Once a constitutional convention is then called, there are no limits as to what other proposals could be introduced at such a convention. Those who, like former President Barack Obama, desire to “fundamentally transform” America, would relish the opportunity to scrap our present Constitution and



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replace it with one that accomplishes that purpose. Right now, gun-control advocates are salivating at the thought of introducing changes to the Second Amendment's protections of the right to keep and bear arms.



Does any American who cherishes the Second Amendment (or the other rights protected in the present Constitution, for that matter) really want a constitutional convention meeting in the present highly charged atmosphere of animosity toward the right to keep and bear arms?

Many Americans are rightly frustrated at the spectacle of federal bureaucrats issuing rules that are enforced as though they are laws. But we should not be stampeded into a "solution" that will only enshrine such misbehavior in the Constitution — or even result in the revocation of the entire document. The proper solution to reining in the unconstitutional regulatory state is to enforce the Constitution, which already limits the federal government to certain enumerated powers and also specifies that all legislative powers belong to Congress.

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