



Tea Party Wants to Dump 17th Amendment?

There is a sizable bloc of Tea Party supporters calling for repeal of the 17th Amendment to the United States Constitution. The 17th Amendment establishes direct, popular election of U.S. Senators, superseding Article 1, Section 3, Clauses 1 and 2 which empowered state legislatures to elect senators.



The relevant parts of Article 1, Section 3 of the Constitution reads: "The Senate of the United States shall be composed of two Senators from each State, chosen by the legislature thereof...."

The 17th Amendment altered the language to read: "The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof...." By substituting the words "elected" and "people" for "chosen" and "legislature," the 17th Amendment significantly shifted the delicate balance of power between state and national government. The drafters of the Constitution as composed in 1787, considered this balance fundamental to the perpetuation of our new republic.

James Madison, the Father of the Constitution, wrote often in *The Federalist* of the sacred sovereignty of the states. In Federalist No. 39, he wrote, "Each state, in ratifying the constitution, is considered as a sovereign body, independent of all others, and only to be bound by its own voluntary act."

In the 62nd of those now famous letters advocating ratification of the proposed national constitution, Madison addresses the nature of the national senate and recommends the election of its members by the state legislatures as a way of giving "the state governments such an agency in the formation of the federal government, as must secure the authority of the former...." This arrangement, he continues, will work as "check on legislation" as passage of any bill would require the assent of the majority of the people (as manifest by the House of Representatives) and the majority of the states (as manifest by the Senate).

Under the original scheme, a senator was elected by the state legislature and as such he was to represent that state in the national congress. The people, as such, would only be indirectly represented by the senators, as their interests would be more closely guarded by the members of the House of Representatives.

There was widespread concern among the delegates in Philadelphia that the popular election of senators might encourage demagoguery and vulgar electioneering, thus rendering a senator beholden to special interests and more anxious for their welfare than for the welfare of the sovereign state whose emissary he was meant to be.

Curiously, the susceptibility to the folly of influence and pandering was precisely the purported impetus for the passage of the 17th Amendment. Often, so the argument went, partisanship and sectional strife prevented the legislatures of states from electing a senator and therefore the state would go



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unrepresented in Washington.

Inspection of the records reveal that while there were occasional vacancies in the Senate that lasted anywhere from a few days to a few months, most of these delays occurred while Congress was not in session so the effect was impotent.

Progressives of the day were intent on "giving power to the people" and pushed an amendment for the popular election of senators through the Congress and on April 8, 1913, Connecticut became the 38th state to ratify the proposal and thus the 17th Amendment became part of the Constitution, significantly altering the structure of our federal government.

As it stands today, the "check on legislation" placed in the Constitution by our Founding Fathers is removed. Also, the states, as sovereign entities, are no longer represented in the federal government, as all members of Congress are elected by the people and thus are answerable to the them (if at all).

For proponents of the repeal of the 17th Amendment, the question is not simply "In America, who is sovereign?" but "In America, who else is sovereign?" The people, it is not denied by those who prefer the original set up, are certainly sovereign in America, but so are the several states whose ratification in 1787 created the federal government that now passes — in a manner most unrestrained — one after another mandate that must be obeyed. If the sovereignty of the states is sacrificed in the name of populism, is there any doubt which sovereign body will be the next to go?

Nationwide, there are candidates and activists (many within the Tea Party movement) that are working to repeal the 17th Amendment. In Idaho, for example, two candidates in the Republican primary for the First Congressional District race advocated repeal, including the winner, Raul Labrador. In the campaign to represent Ohio's 15th Congressional District, Republican candidate Steve Stivers supports repealing the 16th and 17th Amendments. In Utah, Republican Senator Robert Bennett was unseated by Tim Bridgewater whose website proclaims, "We traded senators who represent rights of states for senators who represent the rights of special interest groups."

So sound is the reasoning behind the call the repeal the 17th Amendment, even the *New York Times* in an editorial had to acknowledge the unimpeachable constitutionality of the proposition, "It may be true that appointed senators, accountable only to state legislators, would never approve of many useful federal mandates designed to put the national interests above local parochialism — including everything from the minimum wage to the new health reform law."

While admittedly a back-handed compliment and hardly an endorsement of the return to the Article 1, Section 3 method of senatorial selection, the author reluctantly recognizes the difficulty passage of federal laws of the type mentioned above would have if the senate were to regain its former status and be empowered anew to exercise its right as the representatives of the states.

For now, the most potent recourse for those in favor of the repeal of the 17th Amendment is the ballot box and the election of state and federal legislators committed to the restoration of the foundational principle of federalism upon which our republic was founded.



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