

Attempt to protect states is rooted in past failures

There's a move afoot to give the states the authority to repeal measures enacted by Congress and signed by the president. It's a bad idea. It's also dishonorable.

The measure, led by Republican Rep. Rob Bishop of Utah and taking the form of a proposed amendment to the Constitution, would allow the disenactment of "any provision of law or regulation" upon the vote of two-thirds of the state legislatures.

Champions of the effort point out, no doubt correctly, that such a two-thirds' vote would be difficult to obtain. What's more, Congress simply could relegislate what the states had repealed. That, they say, should cinch the matter, offering protection from potential abuse of the power to dis-enact laws and making the amendment acceptable to everyone.

Proponents of the measure also defend it as an attempt — in line with those going back to the Constitutional Convention of 1787 — to protect the minority from majority tyranny. If that seems a suspicious claim, it ought to. Given the way the federal system works, the amendment would amount — much as the Senate filibuster does — to giving a minority of Americans another means of preventing the majority from governing.

Why is that? Because the two-thirds' vote required by the proposed amendment could be composed of the nation's least populous states — the same situation that allows a minority of Americans, through their disproportionate representation in the Senate, to stymie the

will of the majority.

But one doesn't have to be an ideological majoritarian to sniff in Bishop's proposal the strong smell of long-dishonored endeavors to thwart majority rule in the United States. They go by the names nullification and secession.

Both are ideas and approaches to governance that Americans have repeatedly rejected as illegitimate.

True, neither embodied the elements of the Bishop amendment's wording — the inclusion of all the states and formally "constitutionalizing" the process. In fact, there was nothing constitutional about them.

In 1832, South Carolina tried nullification, unilaterally attempting to refuse to abide by a federal law within its borders. It sought to undo a tariff enacted by Congress to protect American manufacturing, a policy that was good for the industrialized North but not beneficial to the agrarian South. It only was by virtue of the granite nationalism of President Andrew Jackson, himself a champion of the states, and Congress, which obliged him with appropriations for military action coupled with a reduction in tariff rates, that the Palmetto State was persuaded to back down.

Nullification was a mild and limited protest compared with the secession of 11 Southern states, an attempt to undo the electorate's decision to make Abraham Lincoln president. In the name of states' and minority rights (the very rights cited by Bishop and his followers), and in defense of slavery, the South disenacted

a decision of the nation's majority. We know the consequences in lives lost and enduring bitterness.

There's no reason to think that Bishop is trying to constitutionalize nullification (or, as it was earlier known, interposition). He has other aims in mind, and he may never have considered his amendment's relationship to the past. But what he is seeking carries with it a heavy burden of historical failure and contempt. It also suggests that he's not confident of the ability of his party or his policies to gain legislative majorities in their favor by congressional action.

But getting those majorities always has been the acid test of American government, one deeply rooted in the Constitution and in the nation's electoral laws and state legislative rules. If federal power is to be constrained, then why not constrain it through the very body in which Bishop sits — the Congress of the United States — and do so through majorities there?

That he is turned to a proposed amendment shows more than Bishop intends. It's an act like nullification or secession, rooted in despair — a way to get around the House and Senate rather than engage in legitimate governance. Would it not be better and more honorable for Bishop to resign his seat and to push the matter in the states from outside the Congress whose will he wishes to thwart?

Fortunately, his amendment will have hard going in the House and Senate and, should it pass there, in the states. In the end, appropriately, it cannot escape the burden of the past, of past failures and of past desperate acts.

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