

HOW TO REIN IN FEDERAL REGULATION:

THE REGULATION FREEDOM AMENDMENT

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People around the nation are searching for practical ways to rein in the excessive growth of federal power.

One concern shared by many is the expansion of excessive federal regulation that has endangered economic growth and job creation.

You may be familiar with the proposed “REINS” Act proposed by some Members of Congress, which would, if enacted, require Congressional approval of major federal regulations.

Of course, the chances of getting 60 Senate votes and a Presidential signature for such legislation are speculative at the current time.

However, given the more skeptical attitude of many state legislators towards federal power, there is a potential strategy for empowering state legislators to force Congress to propose such a measure.

There is an initiative, backed at this time by legislators affiliated with both parties, in multiple states, to constitutionally require the approval of Congress for significant new federal regulations.

Here is the text and some background on — what we call “The Regulation Freedom Amendment.”

THE “REGULATION FREEDOM” AMENDMENT

“Whenever one quarter of the Members of the U.S. House or the U.S. Senate transmit to the President their written declaration of opposition to a proposed federal regulation, it shall require a majority vote of the House and Senate to adopt that regulation.”

HOW STATES COULD FORCE CONGRESS TO PROPOSE THE AMENDMENT

Just as states helped force Congress to propose the Bill of Rights, States could force Congress to propose the Regulation Freedom Amendment.

Three times in American History Congress has proposed Amendments states wanted “Without a convention”. State pressure effectively helped force Congress to propose The Bill of Rights, the 17th Amendment for direct election of senators, and the 22nd Amendment for presidential term limits.

The likelihood of getting 2/3 of Congress to propose a Regulation Freedom Amendment under current conditions is small at best.

However there is an achievable legal and political strategy for empowering two-thirds of the states to force Congress to propose such an Amendment.

That strategy involves passing state laws in a majority of states, state constitutional amendments in 13 states, OR a U.S. House Rule, along with obtaining a pledge by 41 U.S. Senators, to protect the Constitution from the risk of a so-called “runaway convention”

The state law would strictly limit the authority of delegates to the scope of the state's Article V Resolution and replace and punish delegates who violated the law in the same way some states now punish faithless presidential electors.

If the law were in effect in a majority of states with a majority of the population, a majority of delegates at any convention would be required to limit the scope of that convention.

The state constitutional amendment would prohibit that state from considering or ratifying a runaway amendment, in other words any amendment from a convention that the states who called the convention did not authorize the convention to consider.

If just 13 states enacted such an Amendment, it would be mathematically impossible for 31 states to ratify a "runaway" Amendment.

The U.S. House Rule, and the pledge or statement of intent by U.S. Senators, would prevent either chamber from passing a measure to refer a "runaway amendment" to the states for ratification.

Each of these actions individually or together would have the effect of enforcing the 10th Amendment power of states to strictly limit the scope of an Article V Convention they would have the power to threaten, if they at some point chose to do so.

That would help restore the original meaning of the U.S. Constitution intended by James Madison when he wrote in Federalist 43: "It (the Constitution) equally enables the general and the State governments to originate the amendment of errors, as they may be pointed out by the experience on one side or the other"

It would also be consistent with an American Bar Association Study that was authored by the Harvard Law School Dean Jeffrey Sachs and future Secretary of State Warren Christopher, who concluded that states had the constitutional power to limit the scope of a Convention.

In the current political environment, none of these actions would require a Democratic legislator's vote, although bipartisan has certainly been helpful.

If states, through these actions, understood that they had the clear the power to limit a convention they threatened to an up or down vote on a single Amendment, they could safely force Congress to choose between proposing that Amendment or being required to call a convention.

Congress fears any kind of Convention that would be more powerful than Congress — and has always, throughout American history, proposed the Amendment that enough states wanted rather than call a Convention.

In effect, ending the risk of a so-called "runaway convention" would empower 2/3 of the states to force Congress to propose the specific amendment those states want **without having to call for or hold a convention at all.**

WOULD ENOUGH STATES SUPPORT THE AMENDMENT?

Could a serious effort persuade 2/3 of the states force Congress to propose and then 38 states to ratify an Amendment to require Congressional approval of major new federal regulations?

It is certainly conceivable that the 31 states with Republican majorities in the legislature could end up supporting such an Amendment.

In addition, the energy states of Kentucky and New Mexico would have a strong interest in reining in federal regulatory power. We currently have bipartisan majority support in both the House and Senate Kentucky. In fact, the Democratic Majority Leader of the Kentucky House has endorsed the Regulation Freedom Amendment.

Five other states where Republicans control one Chamber, and where Democrats may be sensitive to the concerns of energy, farm, or fishing industry constituencies that have reason to distrust federal regulators, include Maine, Minnesota, Iowa, Colorado, and Washington.

Finally, Delaware, home to many state-chartered corporations, might be more sympathetic to limiting the regulatory overreach of federal bureaucrats.

The voters, especially in swing districts of swing states, may be quite sympathetic to a measure that would require the approval of elected officials for measures proposed by unelected bureaucrats.

The bottom line is that it is both politically and legally conceivable for a serious long-term campaign to result in the enactment of the “Regulation Freedom Amendment”.

At every stage of progress in this campaign, both to educate leaders and to advocate the Amendment, the fear of its success would constrain the tendencies of federal bureaucrats to antagonize state legislators and those businesses and constituents who support them.

It also might persuade Congress to enact the REINS act so as to forestall a Constitutional Amendment

And finally, a “Regulation Freedom Amendment” campaign is placing undecided legislators in swing states in the position of either supporting the Amendment, or defending the currently unlimited and unaccountable power of the federal bureaucracy.

WHO SUPPORTS THE REGULATION FREEDOM AMENDMENT?

Both Democrats and Republican support the Regulation Freedom Amendment.

Millions of small business owners, their trade associations, and other leaders in the business community fear the impact of federal regulations on their bottom line.

Many 2nd Amendment supporters are also concerned about the potential for federal regulators to restrict 2nd Amendment rights without a vote of Congress.

They know that without the certainty of a friendly majority in the U.S. Senate it will be very difficult for Congress to significantly rein in the federal bureaucracy of a determined President. And they know that there is no certainty of electing a “limited regulation” President in 2016 or even 2020.

Investing in an alternative strategy of reining in federal regulatory power may prove very attractive. A bipartisan wide spectrum of voters will look favorably on making Washington bureaucrats more accountable to elected officials.

CONCLUSION

As voters and state leaders in both parties look for ways to make Washington more accountable, the Regulation Freedom Amendment effort is an attractive option for Members of Congress, state leaders, business leaders, and citizen activists alike.