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Brian Calle: Repeal Amendment deserves debate

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When the new Congress – including many representatives and a senators purporting to be ideological, citizen activists inspired by the Tea Party – takes office Jan. 2, it is likely that perhaps the most unsettled issue in the nation's history will be showcased : the debate over state's rights. This time, though, it may take the form of a proposed constitutional amendment to empower states against federal overreaches.

It is a foregone conclusion that the new Republican majority in the House will, even if just for symbolic purposes, introduce legislation to repeal the Obama health care law. With a Senate still controlled by Democrats and Obama with veto power and no threat of it being overturned, the likelihood of passage is nil for an Obamacare repeal.

What may have some traction, though, is a constitutional amendment, colloquially dubbed the "Repeal Amendment," which would allow states to band together to overturn federal legislation, such as Obamacare.

Randy Barnett, a CATO Institute senior fellow and professor of constitutional law at Georgetown University, drafted the proposal. It reads: "Any provision of law or regulation of the United States may be repealed by the several states, and such repeal shall be effective when the legislatures of two-thirds of the several states approve resolutions for this purpose that particularly describe the same provision or provisions of law or regulation to be repealed."

Basically, the legislation would allow states to band together to overturn federal legislation – if two-thirds of state houses passed resolutions opposing a piece of federal legislation, it would be overturned.

Barnett seems to have his finger on the pulse of many Americans, or at least Tea Partiers and those concerned with keeping government in line with the vision of the founders and the Constitution. The desire is for stronger checks and balances against federal overreaching; giving authority to the states; and putting government decision making closer to the people. Such a reform should pique the interests of voters concerned with increased personal liberty and a better tempered government.

The debate, however, will not wait until January. On Tuesday, Rep. Rob Bishop, R-Utah, introduced the Repeal Amendment in the House of Representatives. Though it will likely not be voted on prior to the new Congress, Bishop believes introducing it now will jump- start the debate for when the new Congress gets to work.

Whether the Repeal Amendment will have legs in the House or Senate is somewhat suspect. Still, the idea warrants serious discussion, analysis and consideration. Should the new divided Congress take up such an amendment it would rehash a much needed national debate about the jurisdiction of the federal government and protections for state government power as enumerated in the Constitution and protected for in the 10th Amendment: "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."

Barnett argues that the "Repeal Amendment would help restore the ability of states to protect the powers 'reserved to the states' noted in the 10th Amendment." He says "the amendment provides a new political check on the threat to American liberties posed by a runaway federal government" in an effort to protect citizen's rights outlined in the constitution.

The idea is already gaining some traction among grass-roots organizations and Tea Party groups and it has a website, www.repealamendment.org.

Critics argue that it would give too much power to smaller states with low populations. Other opponents say it would deprive Congress of its "power of the purse." Not to mention that passing a constitutional amendment historically has been difficult to do.

Nonetheless, when weighing the potential of more reasonable legislation with more accountability to voters, taxpayers against the potential for public policy to be enacted through assumed political mandates and temporal majorities in Congress, the former is preferable. The amendment would force lawmakers at the federal level to work more closely with state legislatures to make laws that are less overreaching and more palatable. And state lawmakers would then have more responsibility in holding their federal counterparts to higher standards because if they did not, they would face the wrath of voters for policies enacted in Congress, too.

A constitutional amendment that would empower states and put an additional check against federal encroachment on individual liberty and the role of state and local government deserves serious consideration in the next Congress, perhaps even as the first order of business.

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