

# The Washington Post

## A strange way to honor the founding fathers

By Dana Milbank

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Republicans gained control of the House last month on a promise to "restore the Constitution." So it is no small irony that one of their first orders of business is an attempt to rewrite the Constitution.

On Tuesday, Rep. Rob Bishop (R-Utah), a member of the House GOP's majority transition committee, introduced a constitutional amendment that would allow a group of states to nullify federal laws with which they disagree.

"This repeal amendment gives states a weapon, a tool, an arrow in their quiver," he told a group of state legislators assembled at the Hyatt in downtown Washington. Of course, states have fired similar arrows before, and it led to a Civil War and Jim Crow - but Bishop wasn't going to get into that.

"I actually hope to have a series of statutes and amendments -- several amendments and several statutes -- that we can introduce this year," Bishop continued, "with the sole goal of not just cutting down the power of Washington to do things to people, but more importantly, is to empower states."

Several amendments? Would it be easier if they just got some red pens and walked over to the National Archives to do the job?

Lest you think this is a hair-brained scheme by one Republican lawmaker, consider that the Repeal Amendment, as proponents call it, has won the endorsement of the man who will be the next House majority leader, Rep. Eric Cantor (R-Va.).

"The Repeal Amendment would provide a check on the ever-expanding federal government, protect against Congressional overreach, and get the government working for the people again, not the other way around," Cantor said in a statement of support. "In order to return America to opportunity, responsibility, and success, we must reverse course and the Repeal Amendment is a step in that direction."

Cantor, Bishop and the other supporters of the amendment believe they are rebalancing the Constitution in a way the Framers would

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like. But it's strange that the lawmakers would show their reverence for the Founding Fathers by redrafting their work.

The mechanics of the amendment are also a bit odd. It would allow the repeal of any federal law - from civil rights to health care - if two-thirds of the states say so. But that could mean that the 33 smallest states, which have 33 percent of the population, have the power to overrule the 17 largest states, which have 67 percent of the population.

Then there's the unfortunate echo of nullification -- the right asserted by states to ignore federal laws they found objectionable - and the "states' rights" argument that was used to justify slavery and segregation.

The man who thought up the amendment, Georgetown Law professor Randy Barnett, intended no such thing. "States are every bit as subject to abusing their power as the federal government," he told me in his office Wednesday. Barnett, a Chicago native who is affiliated with the libertarian Cato Institute and wants to limit restrict government at all levels, said he would oppose the amendment himself if he thought it could be used to restore discrimination. "There was never two-thirds of states that supported slavery or supported segregation," he reasoned. "At best it was half."

Still, Barnett said he was "surprised" by the enthusiasm for his amendment. And much of that enthusiasm is coming from Richmond, a town that knows something about rebellions against the federal government.

Virginia House Speaker William Howell is the leading voice advocating the repeal amendment. The language of the amendment was drafted by officials working for the state legislature. Backers of the amendment claim the support of Virginia Gov. Bob McDonnell, Lieutenant Gov. Bill Bolling, and Atty. Gen. Ken Cuccinelli, as well as Rep. Bob Goodlatte (R-Va.).

But it is another Virginia Republican who has the power to turn the Repeal Amendment into a serious issue - and that is the man who holds a seat in Congress that once would have belonged to the author of the Constitution. "James Madison IS the U.S.

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Constitution, and he provides such a role model," Cantor said at a Constitution Day event at Montpelier a couple of years ago. "Many days, probably most, I walk by the portrait of James Madison in the hall just outside the chamber of the U.S. House of Representatives, pinching myself, wondering what I'm doing here."

Now he knows: He wants to be Madison's editor.

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