



Written by [Steve Byas](#) on January 29, 2021

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Leftists in Power: What Can Constitutionalists Do Now?

At the conclusion of the Constitutional Convention, Benjamin Franklin was asked — probably by Elizabeth Willing Powel, a prominent society figure and the wife of Philadelphia Mayor Samuel Powel — what type of government he and the other delegates had given us. Franklin’s famous response was, “A republic, if you can keep it.”

Franklin had read his history, and he knew that republican government was rare in the world, and when it did exist was always in danger from demagogues such as Julius Caesar. Now, modern would-be Caesars threaten to destroy the republican form of government carefully crafted by the Founders in 1787.



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As a result of the November election, our republican form of government is in grave danger. Over the years, it has endured many assaults. The blunt truth is that many simply do not favor limited government, free enterprise, and a constitutional republic. But now, the enemies of liberty have the reins of power at the federal level.

Joe Biden, a man who has openly expressed disdain for both limited government and free enterprise, will wield the executive power as president of the United States. Should he prove unable to finish his term (a possibility that was openly discussed even before his “election” as the 46th president), he would be succeeded by Vice President Kamala Harris, who is even further to the left, and is, indeed, by any measurement of political philosophy and performance, a dedicated radical.

Congress is also in the hands of those who have little respect for limited government and the free market. Nancy Pelosi is the speaker of the House. When she was asked about the constitutionality of the Affordable Care Act a few years ago, she responded, “Is that a serious question?” She leads a Democratic Party with a very narrow majority in the House — 222 Democrats and 211 Republicans, with two vacancies. We can hope that there are a few Democrats left in the House who do not subscribe to the announced Democratic agenda, but we certainly cannot count on it. Additionally, while there are many fine Republicans in the House, there are also far too many who also have little regard for the Constitution.

The Senate is now split 50-50 Democrat and Republican after Republicans lost both Senate seats in the Georgia runoff election on January 5. With Vice President Harris wielding the gavel as the president of the Senate, she could break any 50-50 tie. For example, Harris will give the Democrats a 51st vote to make Senator Chuck Schumer of New York the majority leader (the most powerful position in the Senate).



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And Schumer has vocally supported a radical agenda which, if it were to be enacted, would do perhaps fatal damage to the Republic. Schumer wants to pack the Supreme Court with additional judges so that they would not provide any obstacle to that radical agenda. Perhaps President Donald Trump's greatest domestic achievement was placing three additional members on the Supreme Court, but Schumer's scheme would negate it. Another goal of Schumer's is to add more states to the Union, for the political purpose of adding additional Senate positions that would be filled by Democrats.

In addition to adding Puerto Rico, Schumer intends to see that the District of Columbia be added as a state. While Puerto Rico would likely add two more Democratic senators, the addition of the District of Columbia would certainly boost the Democratic Party's Senate majority by two. There, Republican presidential candidates regularly receive less than 10 percent of the vote. Even when Ronald Reagan carried 49 states in 1984, he managed a mere 13.7 percent of the vote in the District. While it is clear that adding D.C. as a state is unconstitutional, it is also clear that Schumer and those of his ilk care nothing about respecting the Constitution if it stands in the way of their agenda. And with a more compliant Supreme Court, it would be probable that the new members Schumer seeks would offer no objections to the addition of D.C.

One long-held check on such wild-eyed schemes is the Senate filibuster. Because Senate rules provide that any senator can continue speaking as long as he likes, once bills have gotten to the floor, this has been used by both political parties to block legislation they wish to kill. While a cloture vote can be taken to cut off the filibuster, this requires 60 of the 100 senators voting in the affirmative. With only 50 members, the Democrats would be unable to force through any packing of the Supreme Court, the addition of D.C. as a state, or a host of other radical proposals without any Republican support. While there may be a few Republicans who would go over to the Democratic side on these issues, it is highly unlikely that they could get 10 or more to do so.

Under the best-case scenario, the filibuster is retained and Schumer's leftist agenda is not enacted. However, it is possible that he is able to get the votes to terminate the filibuster and follow that up with a radical agenda that will include the Green New Deal, massive tax increases, adding more states, open borders, court packing, and the like.

This leads us to the question that many constitutionally minded Americans have been asking since it became apparent that the enemies of our republican form of government are now in control: *What do we do now?*

Before we explore those solutions, we should first look at what would be ineffective solutions or worse.

- *Start a Third Party:* Former Alaska Governor Sarah Palin is among those who have openly suggested the formation of third political party as a solution. While one can understand the frustration of millions of Americans with the Republican Party, generally, it is much easier to take control of one of the two major political parties and win that way than to create a third party and then expect to win the general election. Had Trump run as a third-party candidate in 2016, he might very well have captured numbers similar to those won by Ross Perot in 1992 (about 20 percent of the popular vote), but he would not have won the election.

In our present environment, a third party led by the likes of Palin would draw votes away from the Republican Party (essentially no Democrat would join this hypothetical party) and ensure the overwhelming victory of the Democratic Party. The most likely scenario in 2016, had Trump made a



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third-party bid, would have been that we would have had President Hillary Clinton rather than President Donald Trump.

Of course, if the Republican Party implodes or fractures as a result of its treatment of Trump and his supporters, then the dynamics would be different. Regardless, constitutionalist candidates are viable only when the voters are sufficiently informed, and the understanding that is vital to saving our Republic must be created during non-election years and election years alike through educational efforts that are deeper and broader than political campaigns.

- *Term Limits*: Another idea that is just a Band-Aid approach, at best, is term limits. Like the third-party idea, it is simply a “feel-good” measure. Frustrated citizens are open to the idea of term limits because they mistakenly believe the solution is to “get rid of the bums” that are in office right now. The reality is that a really bad member of Congress, such as Nancy Pelosi, would not be replaced by a Barry Goldwater. In her San Francisco district, it is more likely that she would be replaced by someone like her — or worse, if that is possible. The electorate that put Pelosi into office would be the same electorate picking her replacement.

The only way of changing this problem of revolving socialists is to change the nature of the electorate by raising their level of understanding. With the proper understanding, the voters would replace socialists with constitutionalists instead of replacing socialists with other socialists.

Conversely, some really good members of Congress would be put out to pasture prematurely. Term limits would limit the franchise of voters, and we would lose individuals such as Kentucky Republican Thomas Massie, perhaps the best member of Congress.

Term limits would more likely make a bad situation even worse. A person who has been a member of Congress for a decade or longer evidently likes being in Congress, and is thus likely to be more responsive to an organized constitutionalist constituency so as to remain in Congress. On the other hand, a member of the House or Senate who is in his or her last term (due to term limits) is less likely to respond to such pressure. Such a term-limited member is more likely to care what powerful lobbyists want — after all, if he is being term-limited, the member of Congress needs to look for his next job. Voting in lock-step with a powerful special interest group or a large corporate entity could prove just too tempting.

If this sounds overstated, consider how a lame-duck (post-election) session of Congress is more likely to ignore the wishes of the voters than a regular session, particularly during an election year. Under term limits, congressmen who are in their final term are the equivalent of lame-duck congressmen.

- *Constitutional Convention (Convention of States)*: The most dangerous idea is that of a constitutional convention or, as some like to call it, a Convention of States. The late Supreme Court Justice Antonin Scalia strongly opposed this proposal, telling the Federalist Society that this is a bad century in which to write a Constitution.

Powerful leftists, such as Harvard Law Professor Lawrence Lessig, are proponents of a constitutional convention, because they believe it is the best way to get rid of our present Constitution and replace it with something more to the liking of progressives. Many liberals are salivating at using a con-con to gut the Second Amendment or the Electoral College. While there are more than a few conservatives who have supported the idea of such a convention, which they generally prefer to call a “Convention of States,” they should stop and think what such a convention would actually look like.



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If these naïve conservatives do not like the current makeup of Congress, why do they think that a convention would have delegates who are more faithful to the Constitution? After all, the electorate that picked the present members of Congress would be the same electorate picking delegates to any such convention. In short, the Convention of States would include individuals such as Alexandria Ocasio-Cortez, Nancy Pelosi, and Bernie Sanders, as well as those such as Rand Paul, Thomas Massie, and Mike Lee.

Should we have such a convention, and it actually produced something good and nothing bad, what difference would it actually make? After all, members of Congress, presidents, and judges regularly ignore the clear wording of the Constitution we have now. What makes one think they would suddenly start following any new amendments to the Constitution?

In 1791, the Bill of Rights was adopted, including the First Amendment, which explicitly said that Congress was to make no law abridging the freedom of speech or of the press. Yet, only seven years later, Congress did just that when it passed, and the president signed, the Sedition Act, which made it a crime to criticize members of the legislative or executive branch of the government. And the courts applied it by fining or jailing violators of the law!

What Can Be Done to Save the Republic

At this point, some readers might be throwing up their hands and asking, “If none of these things is the right idea, then just what do you propose?”

That is an understandable response, but there are other strategies that can certainly mitigate our difficult circumstances, and maybe even reverse the drift away from the republican form of government we are in danger of losing altogether:

- *Restore Election Integrity*: Americans have long settled our political differences either at the ballot box or in the jury box. While we do not like to lose an election, we feel confident that another election is coming up in two years, and we can right the ship then. The problem with this past election is that nearly half the population believes — with good reason — that there was massive vote fraud that took place, enough to alter the outcome of the election. Once people lose faith in the election process, thinking it makes no difference because the other side is going to just steal the election anyway, they either drop out of the process or resort to more violent means to make a difference.

Because of this, it is imperative that we push for reforms of the election process that will restore confidence in settling differences at the ballot box, and will make sure that cheating is either eliminated or reduced to insignificance.

While Republicans lost control of the federal legislature, they still control the legislatures in most of the states. We are more likely to bring effective pressure to bear against members of the state legislatures than members of Congress, and constitutionalists should use such clout to pressure the state legislatures to reform election laws to eliminate, or at least substantially reduce, vote fraud.

Among the reforms I would suggest is the elimination of all voting machines that are connected to the Internet. Additionally, all voting should be done by *paper* ballots, so an actual record exists of how people voted. With optical scan machines, these paper ballots could be swiftly counted, and the results transported to the county election boards. If there were to arise any disputes, we would have the paper ballots that could be counted by hand.



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There should be no centralized vote counting, as was done in Atlanta and in other places across America. Transporting ballots out of the precinct to a centralized counting site is an open invitation to vote fraud— adding or subtracting ballots, changing votes, and more. It is much more difficult to manipulate vote counting if all counting — of paper ballots — is done within the precinct.

Election officials should not be allowed to change election law — law designed to reduce the possibility of fraud. Interestingly, a national commission created in the aftermath of the disputed Florida presidential vote (between George Bush and Al Gore) of 2000, and chaired by former President Jimmy Carter and former Secretary of State James Baker, actually had some very good ideas. They recommended that states create a “uniform system of voter identification,” which would include a photograph. They also suggested that states “do more to prevent voter registration and absentee ballot fraud.”

Also interestingly, in light of the controversies of the past election, they expressed concern about widespread mail-in voting and even in-person early voting. They argued that widespread mail-in voting “increases the risk of fraud” and that in-person early voting “allows a significant portion of voters to cast their ballots before they have all the information that will become available to the rest of the electorate.”

These and other reforms are necessary to restore integrity to the voting process. State legislators can make these and other needed changes, and they can emphatically state that neither the courts of their states nor election officials can change these laws — making law is the province of the legislature.

- *Utilize Nullification:* A powerful weapon for state legislatures, *nullification* is another tool in the fight to preserve liberty and save the Republic. Nullification is not a fringe idea, nor is it a dangerous or even novel idea: It is simply a recognition that states and their citizens created the Union and that the Union should answer to them. They should not answer to the Union.

In the aforementioned 1798 Sedition Act, in which Congress, the president, and the courts — the entire federal government — blatantly violated the Constitution, James Madison and Thomas Jefferson responded by developing the idea of nullification. Writing anonymously (so as to avoid being jailed under the Sedition Act), they were able to get the state legislatures of Kentucky (Jefferson) and Virginia (Madison) to adopt resolutions condemning the Sedition Act and interposing between their states’ citizens and the federal government.

Actually, Madison had already addressed this problem — what to do if the federal government refused to follow the Constitution — in *The Federalist*, No. 46. “Should an unwarrantable measure of the federal government be unpopular in particular States, which would seldom fail to be the case, or even a warrantable measure be so, which may sometimes be the case, the means of opposition to it are powerful and at hand. The disquietude of the people; their repugnance and, perhaps, refusal to cooperate with officers of the Union; the frowns of the executive magistracy of the State; the embarrassments created by legislative devices, which would often be added on such occasions, would oppose, in any State, very serious impediments.”

Thomas Jefferson expressed similar sentiments: “The several states composing the United States of America are not united on a principle of unlimited submission to their general government.” On what to do if the federal government pushes its boundaries, Jefferson said, “Where powers are assumed which have not been delegated, a nullification of the act is the rightful remedy.”



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While it is very clear that these two Founding Fathers — Madison (known as the Father of the Constitution) and Jefferson (the author of the Declaration of Independence) — saw nullification as a way to peacefully check actions of the federal government that go beyond their constitutional authority, some today have argued that nullification was just a doctrine to protect slavery and the issue over which the Civil War was fought. Both of these assertions are historically incorrect. The nullification doctrine was developed in opposition to the Sedition Act, which had nothing to do with slavery. And the Civil War was not fought over nullification, but rather over the question of *secession* — a state leaving the Union. Jefferson and Madison did not propose secession. On the contrary, they wanted to see the preservation of the form of government — a federal republic — created by the Constitution, in the face of the unconstitutional Sedition Act.

In fact, arguing that nullification was used to protect slavery turns history on its head. Rather than being used to protect slavery, it was often used by northern states against slavery. After the passage of the Fugitive Slave Act of 1850 — which required the return of accused runaway slaves, without due process of law — several states, including Michigan, Vermont, Wisconsin, and Massachusetts, enacted statutes to frustrate the federal law. Abolitionist William Lloyd Garrison said, “Nullification [to fight the Fugitive Slave Act] is loyalty to goodness.”

But what about today? How can this principle, created late in the 18th century, and used frequently in the 19th century, work in modern America to prevent the loss of liberty and to preserve our Constitution?

Thomas Woods explains how to make effective use of nullification today in his book *Nullification: How to Resist Tyranny in the 21st Century*. Writing for the Mises Institute, Woods said, “Nullification is the Jeffersonian idea that the states of the American Union must judge the constitutionality of the acts of their agent, the federal government, since no impartial arbiter between them exists. When the federal government exercises a particularly dangerous power not delegated to it, the states must refuse to allow its enforcement within their borders.”

Also writing for the Mises Institute, Ryan McMaken noted that, while nullification is today associated with the Right, the Left has often used nullification in such matters as their unilateral legalization of marijuana and the sanctuary city movement. While many conservatives might differ with the use of nullification in some areas, it does demonstrate that nullification can be an effective tool to fight for the Constitution, as well.

McMaken wrote, “The conservatives have had some successes in their own way. Eight states (at the prompting of conservatives) have passed laws that nullify federal laws on guns within their own borders. Like the marijuana nullifiers, the gun-law nullifiers simply refuse to assist the feds in enforcing federal gun laws.” In Michigan, conservatives helped pass a law that kept state officials from helping the feds in indefinite detention under the National Defense Authorization Act (NDAA).

“When nullification enjoys either the indifference or support of a sizable portion of the local population, and is based on encouraging government *inaction*, it tends to work,” argued McMaken. He noted that federal officials can only do so much to enforce federal law on their own, without the assistance of local government.

On the other hand, “If nullification consists of requiring an active role for state and local officials, follow-through is a problem,” McMaken wrote. But state governments can do a lot — by doing nothing.



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Doing nothing to help federal officials in pushing unconstitutional laws via nullification is what states *can* do. Without assistance from local authorities, federal officials are often frustrated in attempting to enforce unconstitutional laws.

- *Concentrate on the House of Representatives:* While the Democrats gained three Senate seats in the last election, they actually lost seats in the U.S. House of Representatives. It is more difficult to fraudulently win House seats than Senate seats because there are more of them — 435 — and they “fly under the radar,” so to speak. Senate races are contested across an entire state, while House contests are in districts, which are smaller both geographically and in population (except in a state such as Wyoming, which has only one member in the House of Representatives).

Because of this, an individual citizen can have a much greater impact on a U.S. House race than either a U.S. Senate contest or a presidential contest. If a House candidate had, say, a dozen dedicated volunteers in each county of a congressional district where contests are usually close — where candidates lose by less than five percent of the vote — the candidate would have a very good chance of winning. If this were to be multiplied across just 25 congressional districts, it would be very significant.

Candidates who are true constitutionalists have a much better chance of emerging victorious in a House contest than in a Senate race, especially if the candidate can spend his or her time campaigning on issues, and does not have to explain the *why* of limited government. In other words, if the electorate is already attuned to the ideas of limited, constitutional government, a candidate espousing those views is much more likely to win.

This brings us back to the remarks made earlier on term limits. Unless the electorate is changed, either by a mass influx, or mass exodus, of voters, limiting a leftist congressman to six years, or whatever, will only result in his or her replacement with another leftist congressman. Another way of changing the electorate is by educating the electorate with the principles of limited government, free enterprise, and all of the ideas found in the U.S. Constitution. Then, after the electorate is thus educated, they must take *action*. Effective action requires *organization*.

- *Organize for Less Government, More Responsibility, and — With God’s Help — a Better World:* There are many fine conservative organizations in the fight to save our republican form of government. Some are good at education, while others concentrate on political action.

The organization that does the best at both *education* and *organization* is The John Birch Society, the parent organization of The New American. Its slogan sums up its goal — “Less government, more responsibility, and — with God’s help — a better world.” The way to achieve these lofty goals is through the methods of education and organization.

Robert Welch, the founder of The John Birch Society, said in 1966, “Our job is simply to create sufficient understanding, in the confidence that all else, including the correct and necessary political action, will automatically follow.” He explained that attempting to achieve needed changes through “the organization of political forces and without a sufficiently thorough educational program and the underlying base, is to act like the ancient Egyptians in trying to make bricks without any straw to hold the clay together.”

William Hahn, the CEO of The John Birch Society, told The New American that in the aftermath of the election, we can expect to be “hit from nearly all sides by those who wish to subvert Americanism into globalism. However, this fight didn’t begin with President Trump and it certainly won’t end with him.”



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Hahn said the way to fight those who are organized against limited government is with our own organization.

“Constitutionalists need to use the constitutional tools given to us by our Founding Fathers,” Hahn said, “especially through interposing and nullification,” but advised that “to do so, elected officials need to understand these tools and how to use them.”

Hahn added that JBS has “the structure to establish reach and influence in a locality through face-to-face interaction. This is what sets us apart from many other organizations who are reeling from censorship and tyranny.”

Hahn invited the readers of The New American to “join our educational army by applying for membership today at [JBS.org](#).”

As Sam Adams is quoted as saying before the American Revolution, “It does not take a majority to prevail ... but rather an irate, tireless minority, keen on setting brushfires of freedom in the minds of men.”



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