



Written by [Joe Wolverton, II, J.D.](#) on March 2, 2011

Idaho State Rep. Seeks Repeal of 17th Amendment

On Monday, Idaho State Representative Pete Nielsen (R-Mountain Home) introduced a non-binding measure calling on the Congress of the United States to repeal the 17th Amendment.



The 17th Amendment to the U.S. Constitution was ratified in 1913 and reads in relevant part: The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof. As set forth in the original text of Article I, senators were to be chosen by the Legislature of each state. Inarguably, then, the 17th Amendment stripped the state legislatures of the responsibility of electing senators to the national government and placed it in the hands of the people. It should be recalled that the American legislative branch was not designed as a parliament of representatives of the people, rather as a congress a bicameral assembly of representatives of the people and representatives of the sovereign states. This amalgamation of the two authorities whose measured cession of sovereignty created the national government meant that the national government could not impose any new law on the people or the states without the consent of both the peoples and the states representatives in the bicameral legislature.

For now, [the issue in Idaho is dead](#). By a 13-6 vote, the House State Affairs Committee of the Idaho House of Representatives killed the measure.

After the vote, Representative Nielsen was undeterred and spoke in defense of his proposal: "They [U.S. senators] are no longer appointed by the state legislatures. That has all gone awry with the passage of the 17th Amendment."

While it wont change the outcome of the recent committee vote, Representative Niensens assessment of the issue is constitutionally and historically accurate.

That the people are the ultimate sovereign in the United States is not to be seriously debated. The people of all lands are endowed by their Creator with the right of self-government, a right alienable only according to the constitutional expression of their will and pleasure to do so. Furthermore, as governments are the creation of men, governments are endowed only with those specific and very



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limited powers ceded to them by those whose sovereign will gave them life the people.

In the case of the Senate, however, it was not the peoples interests that were meant to be advocated. That role, the role of representing the manifest will of the people, was given to the House of Representatives. It is aphoristic to say that the Framers of the Constitution of the United States created a national government of separated powers and checks and balances. While at once establishing a dynamic and robust central authority, the Founding Fathers in their wisdom tempered the natural tendency of such a government to accumulate authority by relying upon the equally sovereign states and the retardant effect they would have upon this tendency of consolidated governments to grow unwieldy and tyrannical.

To that end, on Thursday, June 7, 1787, the delegates to the Constitutional Convention in Philadelphia voted unanimously to place the election of the members of the national Senate in the seasoned and popularly-elected representatives in the various state legislatures. The river of representation of the people was to be distilled through several layers of elected representation (the definition of federalism). The people were to be represented in the new Senate as citizens of the states. Thus, removed as it was by degrees from the heat and mercurial temperament of the momentary passions of the people, said Edmund Randolph, the Senate would act as a check against the turbulence and follies of democracy.

Alas, as of April 8, 1913, that check has been abolished and the nation was pushed closer toward falling into one of the innumerable chasms of democracy. The Senate no longer reflects the political philosophy of our Founding Fathers that the states were best suited to respond to the legitimate needs of their citizens. The interests of the United States have been sacrificed on the altar of popular democracy. Sadly, our Founders knew that all the republics of history died on that altar and they, through the mechanism of federalism and states rights, sought to obviate this end for the republic they were forming.

In the case of Nielsens particular proposal, however, many of those who expressed opposition cited the particularly strong wording of the measure as the reason they voted against its passage. Reportedly, in the document itself, Nielsen referred to the Senate as an arrogant bureaucracy.

One such comment was made by State Representative Cherie Buckner-Webb (D-Boise), who was quoted by the [IdahoReporter.com](#) as saying that she had concerns about the blanket of condemnation the measure would cast on the Idaho Senate.

Another of Nielsens colleagues, Representative Elfreda Higgins (D-Garden City) asked Nielsen if his condemnation of Congress included Idahos delegation, as well. Nielsen responded that his words were directed at the departments and agencies of the federal government and not at anyone in particular. In many instances, the bureaucrats the people who work in the agencies I feel are arrogant, said Nielsen. They are untouchable, so to speak.

Without commenting on whether he would re-work the text of his measure and offer it again, Nielsen did say that he had the support of Idaho Governor Butch Otter. Governor Otters support for the repeal of the 17th Amendment seems to be in question, however, based on a story published in September 2010 by the [Spokane \(Washington\) Spokesman-Review](#):

The Republican seeking a second term in the governors office declared during a political debate Monday that he now opposes repeal of the 17th Amendment to the U.S. Constitution, which would return the selection of U.S. senators to state legislatures. But just five months ago, while in Spokane as a keynote speaker for a tea party rally in Riverfront Park, Otter was sharply critical of



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the 17th Amendment, which some conservative groups consider an intrusion on states rights and its repeal is part of the Idaho Republican Partys state platform.

While news of a any elected official speaking out publicly in favor of the repeal of the 17th Amendment is attention grabbing, the prosaic defense of the Constitution falls to those with pens consecrated to the abolition of tyranny and the restoration of the full panoply of republican institutions as set forth by the Constitution.

For now, we see how by the repeal of one amendment (the 17th) and the re-establishing of another (the 10th), our Republic can be put back on the path that leads to smaller government and constitutional order.

To that end, constitutionalists welcome the aid of Pete Nielsen and others to the cause of freedom. Those already committed to this endeavor have formed a two-flanked attack against the monster of democracy and its predictable progeny mob rule: from one side, the restoration of the rights of states to govern themselves as expressed by the 10th Amendment, and from the other, the repeal of the 17th Amendment that robbed the states of the rightful representation of their particular interests in the halls of Congress. The 17th Amendment has deprived our Republic of a crucial counterbalance to the aggressive accumulation of power that comes from the destructive devices that are the means and ends of the combination of demagogues that for decades has populated the executive and legislative branches.



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