

## What is Madison's "Lost" Amendment?

The Constitution is missing a "bottom up" check by "the several States" on the national government (which Madison proposed a year before he died)

The Story:

By the 1820s, Jefferson and Madison (and others) had observed the underlying tendency within the Constitution to judge excessive federal powers in favor of the federal government.

There are two subtle problems:

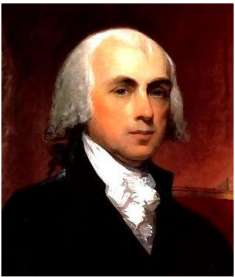
### No one is a fair judge in their own case.

- The People (not the Supreme Court) must be the final word.
- Three-fourths of the states must be the ultimate voice of the People, since only they can change the Constitution.

### "Unchecked" powers become absolute powers.

- The Constitution is missing a direct check by the states upon the laws of Congress (one similar to judicial review by the Courts)

In 1832, John C. Calhoun of South Carolina proposed a solution to "the feds" judging their own "unchecked" powers: Let each state decide on its own. This flawed doctrine is called (single-state) nullification.



In 1835, a year before he died, Madison strongly denounced Calhoun's nullification as "a contradiction in terms" and "a fatal inlet to anarchy." It defeats the original purpose of the Constitution, contradicts the "supremacy" clause, and breaks the union apart.

Madison suggested his own answer: an amendment so "as to provide a more satisfactory mode" for guarding against violations.

Madison's solution was "lost" for two reasons:

John C. Calhoun was interested only in protecting slavery, and since the slave states would never be a majority, Calhoun had no use for Madison's idea.

The "modern" era is worse: "progressives" ignored the problems entirely! To those who prefer an unlimited federal government having the Supreme Court as the last word, Madison's idea is again of no use.

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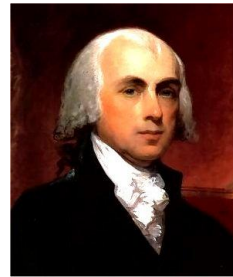
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## SPA (State Powers Amendment)

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**We need a State Powers Amendment (SPA) so a representative majority of states can repeal federal laws and regulations, in whole or part.**

- It should be a “bottom-up” check, which is as practical, timely, and direct as a judicial opinion.

### What is the main text of the State Powers Amendment?

“Section 1. 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 a representative majority of the several states approve resolutions for this purpose that particularly describe the same provision or provisions of law or regulation to be repealed. [A representative majority of the several states is a majority of the states also having together a majority of the Representatives in the Congress.]”

## Talking points for the SPA

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- Amending the Constitution has been a focus for historic political movements. (ERA is a recent example, and also the 18<sup>th</sup> amendment.) SPA will focus the “constitution” movement and create a national debate on false doctrines such as the “Living Constitution” and Judicial Supremacy.
- As a practical matter, if SPA existed, Obamacare would have been repealed in whole or part.
- Following the 17th amendment (1913), the States lost their last practical checks on federal powers. SPA would not only correct this unintended consequence, but even provide better safeguards for federalism and balanced powers.
- Switzerland has had a similar “bottom-up” check in its Constitution since 1847. This keeps its national government small in comparison with its regional governments (cantons)
- Some object to the states calling for a Convention to propose amendments under Article V of the Constitution, but this is secondary. If SPA is a bad idea, then why do it at all? On the other hand, what if an “SPA Convention” would save the American Constitution? Then it is clearly worth some risk and the means are justified.

Written by Lloyd Sloan, Sep-2012, [lloyd\\_sloan@yahoo.com](mailto:lloyd_sloan@yahoo.com)

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