By Gary Porter, National Director, Constitution Leadership Initiative, Inc.

Imagine it is July, 1794 – in an alternate universe. Virginia militiamen have just returned from a successful foray across the Potomac River into Maryland where they bush-wacked a company of Confederated States of North America (CSNA)regulars, killing three and wounding several more. The attack was a response to the recent capture of several Virginia fishing boats that Maryland claimed were fishing in CSNA waters. These small border skirmishes had been going on for the last several months as "The Tariff Wars" heated up between CSNA and "The Southern Alliance," the confederation formed by Virginia, the Carolinas and Georgia after the Articles of Confederation Congress disbanded in May 1790. The breakup of the Confederation, predicted by Alexander Hamilton in Federalist 13 if the proposed Constitution was not ratified, happened amicably enough; and for a while it looked as though the two new confederacies might actually maintain a friendly, if very competitive co-existence. Maryland's siding with the northern confederacy was a surprise; but in the end, their common border with Pennsylvania was deemed too difficult to defend.

Most in the North blamed the break-up on Patrick Henry's soaring oratory during the Virginia Ratification Convention, conveniently ignoring that it was really the Federalists of Massachusetts who failed to "close the deal" in their State's convention, causing New Hampshire to similarly reject the proposed new Constitution. When news of these two prominent rejections reached the Virginia and New York conventions, the Anti-Federalists became greatly emboldened; their rhetoric reaching new heights. Some said they could see the remaining color drain from his pallid face as the announcement of the two northern States' rejections was read on the convention floor. When New York and then Virginia failed to ratify, this sounded the death knell for "Jemmy" Madison's dreams of a new consolidated government. He immediately went into seclusion at his beloved Montpelier and wasn't seen in public for months. All his work of the last two years; the hours of research, the speeches, the "Publius" essays – all for naught.

This foregoing narrative, though fanciful, was quite possible if the thirteen united States had not ratified the new plan of government devised by the Philadelphia convention. That this narrative did not become part of the world's history books can be attributed to only a very few key arguments and agreements made in the ratifying conventions. One compelling argument was that the document lacked a guarantee of some fundamental rights the colonists expected. If the Federalists in Massachusetts, Virginia and New York had not agreed to accept amendments clarifying these rights, these three states, and perhaps others, simply would not have ratified. (North Carolina's convention actually did formally reject the Constitution until they were assured they could submit proposed amendments - they quickly convened a second convention. Rhode Island, who refused to even send a delegation to Philadelphia, didn't ratify until the proposed amendments were published, and then by a scant two votes). Second, and more important for our subsequent discussion, the Anti-Federalists, strong supporters of states' rights, were argued that the new plan gave too much power to the Federal government. They relented to ratification when convinced that the plan provided them a strong, direct voice in the new government via the Senate, and that the Federal government was granted only a few, carefully enumerated powers. State legislatures would directly appoint their Senators, with the understanding that they could be swiftly recalled if they did not follow instructions in their votes on the Senate floor. The Constitution was thus ratified; the States had their voice in the Senate, the people in the House. This system worked quite will for about 70 years.

But there gradually arose a "feeling" that some senatorial elections in the state legislatures were being "bought and sold." Between 1857 and 1900, Congress investigated three elections over alleged corruption. In 1900, the election of Montana Senator William A. Clark was voided after the Senate concluded that he had "purchased" eight of his fifteen votes.

Electoral deadlocks were another issue. Some States delayed appointing their Senators. One of Delaware's Senate seats went unfilled from 1899 until 1903.

By 1910, 31 state legislatures had passed resolutions calling for a constitutional amendment allowing direct election, and in the same year several Republican senators who were opposed to such reform were voted out, acting as a "wake-up call" to the Senate. Twenty-seven of the 31 states had also called for a constitutional convention on the issue, only 4 shy of the threshold that would require Congress to act. To avoid a "rogue convention", in which unexpected or damaging amendments could be considered (think 1787), a resolution to require direct elections of Senators was finally introduced in Congress on May 13, 1912. Within a year it had been ratified by three-quarters of the states, and was declared part of the Constitution by Secretary of State William Jennings Bryan on May 31, 1913, two months after President Woodrow Wilson took office.

The 17th Amendment has been cheered by the Left as a victory for populism and democracy, and decried by the Right as a loss for states' rights (The Death of Federalism!). I can think of no finer example of "shooting yourself in the (political) foot." For the States to actually ask for this change seems incredibly near-sighted. Much of the encroachment by the Federal Government on areas of policy traditionally administered by the states can, I believe, be traced to this Amendment. Madison believed (niavely, in my view) that *"[A]mbitious encroachments of the federal government, on the authority of the State governments, would not excite the opposition of a single State, or of a few States only. They would be signals of general alarm."* His use of *"general alarm*" suggests he thought the people themselves would rise up to voice their opposition. This presumes that the people have sufficient knowledge of the States' rights under the Constitution to actually recognize encroachment as such. On the other hand, even when 60% of American do recognize encroachment (i.e. Obamacare), "The People's Congress" enacts it anyway. Obamacare would not have passed a pre-17th Amendment Senate!

How about repealing the 17th? Whole websites are now devoted to it; then-Georgia Senator Zell Miller famously called for its repeal on the Senate floor. A brief look at who today supports repeal and who opposes it reveals much; in support of repeal are the various Tea Party organizations, National Review magazine and others on the Right; opposed sit, predictably enough, The LA Times, Rachel Maddow, and other liberal organizations, some even eager to throw the "R"-word into the argument. Solon magazine called the repeal movement "The surprising Republican movement to strip voters of their right to elect senators." Seeing that they willingly threw away their voice in the Congress, my sympathy for the States is limited, but I wholeheartedly support repeal.

Was the 17th Amendment a good idea? Should we keep it (think 21st Amendment)? Speak up!