

## 1. NEW MEXICO DELEGATION AND THE CONSTITUTION

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For Immediate Release

### **Former Senator Schmitt Slams New Mexico's Congressional Delegation for Attack on Liberty and the Constitution**

The current New Mexico Congressional delegation and its Democratic Party leaders in Washington have served neither New Mexico nor the United States well in 2009. The prospects for 2010 are even worse.

Senators Jeff Bingaman and Mark Udall and Congressmen Martin Heinrich, Ben Ray Lujan, and Harry Teague continue to undermine liberty and constitutional government in America. Effectively advocating national socialism, they persist in supporting and enabling abuse of the Commerce Clause of the Constitution as well as the 5th, 10th, and 14th Amendments to that founding document. As a consequence, regulation substitutes for liberty and bureaucratic nannies replace personal responsibility— all at the financial expense of the liberty and tax dollars of working and retired New Mexicans.

The Founders intended for the Constitution to limit the powers of the Congress to “all legislative powers herein granted,” with unspecified functions of government left to the States and the people by the 10th Amendment. In this context, the purpose of the Commerce Clause (Article I, Section 8, Clause 3) clearly is to provide a uniform flow of commerce “among the several States” and not at regulating ALL interac-

tions among the people. The inclusion of entities outside the jurisdiction of Congress, that is, “foreign nations,” in the wording of the Clause shows the Founders’ obvious intent. The Courts’ too often successful argument that the Commerce Clause can be paired with the Necessary and Proper Clause (Article I, Section 8, Clause 18) stands wrong on its face. The Necessary and Proper Clause specifically refers to the “execution of the foregoing powers” that is, enumerated constitutional powers and no others, a principle that must be reaffirmed.

Additionally, the 5<sup>th</sup> Amendment to the Constitution states, “No person shall...be deprived of life, liberty, or property without *due process* of law. After the Civil War, the 14<sup>th</sup> Amendment was ratified and requires that “No State shall...deny to any person within its jurisdiction the *equal protection* of the laws.” Although specifically applicable to the “States,” the “equal protection” clause of the 14<sup>th</sup> Amendment, taken in concert with the “due process” clause of the 5<sup>th</sup> Amendment, has come to apply to the Federal Government as well. Many federal laws and proposed laws, as well as regulations, therefore are unconstitutional in that they reward or penalize some individuals and not others, depriving those individuals of “equal protection.” In addition to there not being

specified federal power to do so, restricting individual choice in health insurance and services, children's education, and energy use would be just three currently visible examples of proposals and policies that violate "equal protection." Finally, additional incompatibility with the 14<sup>th</sup> Amendment occurs when States are required to enforce federal laws that violate "equal protection."

The Constitution's 10<sup>th</sup> Amendment leaves constitutionally unspecified functions, or non-enumerated powers, of government to the States and the people by stating: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the People." Thus, the United States Government, that is Congress and the President, have no constitutional authority to exert power over, for example, otherwise legal individual health decisions, energy production and use, private business conduct, educational desires, labor relations, and financial contracts. In these and other areas, the New Mexico Delegation has allowed the Federal Government to erode the peoples' liberty as well as their State's legitimate authority.

Have States like New Mexico served their citizens well under the power of the 10th Amendment? Clearly not well enough; but that is New Mexico's problem to fix, not the Federal Government's.

One does not have to look far to find examples of existing or proposed federal laws and regulations, wrongly supported by the

New Mexico Delegation, that are unconstitutional on their face under Article I or the 5<sup>th</sup>, 10<sup>th</sup>, and 14<sup>th</sup> Amendments. These include mandated limits on our choices of (1) health care and health insurance; (2) automobiles and other energy use; (3) K-12 education; and (4) business-employee and other free enterprise relationships. Also, the Delegation has done nothing to prevent the taking of private property from one person for more favored private use by another and prohibited by the 5<sup>th</sup> Amendment.

In summary, the New Mexico Congressional delegation has wandered far into an unconstitutional wilderness with its advocacy and support of heavy handed federal control of health care, home ownership, business and labor relations, financial institutions, executive and employee salaries, energy production and use, consumer goods manufacturing, takings of private property, and the list goes on and on.

New Mexicans must join with the clear majority of like-minded Americans elsewhere to protect liberty and take back control of their governments in 2010. It is obvious that our current Senators and Representatives in Congress will not do this for us.

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