

We the People

of the United States, in order to form a more perfect Union, establish Justice, insure domestic Tranquillity, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

Article 1.

Section 1. All legislative Powers herein granted, shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section 2. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress, and within each subsequent Term of Years; and such Enumeration shall be made in every tenth Year, and each State shall have at least one Representative; and until such Enumeration shall be made, the State of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the House of Representatives, the Electors in that State shall fill such Vacancies.

Section 3. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof for six Years, and each Senator shall have one Vote.

Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Clases. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one third may be chosen every second Year; and if Vacancies happen by Resignation, or otherwise, during the Term of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.

No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

The Vice President of the United States shall be President of the Senate, he shall have no Vote, unless they be equally divided.

The Senate shall choose their other Officers, and also a President, one to preside, in the absence of the Vice President, or when he shall exercise the Office of President of the United States.

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States, the Chief Justice shall preside. And no Person shall be convicted without the Concurrence of two thirds of the Members present.

Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of Honor, Trust or Profit under the United States; but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

Section 4. The House of Representatives shall have the sole Power of Impeachment. The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States, the Chief Justice shall preside. And no Person shall be convicted without the Concurrence of two thirds of the Members present.

Section 5. The Congress shall assemble at least once in every Year, and such Meetings shall be on the first Monday in December, unless they shall by Law appoint a different Day.

Section 6. Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business, but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.

Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any Question shall, at the Desire of one fifth of those Present, be entered on the Journal.

Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three Days, nor to any other Place than that in which the two Houses shall be sitting.

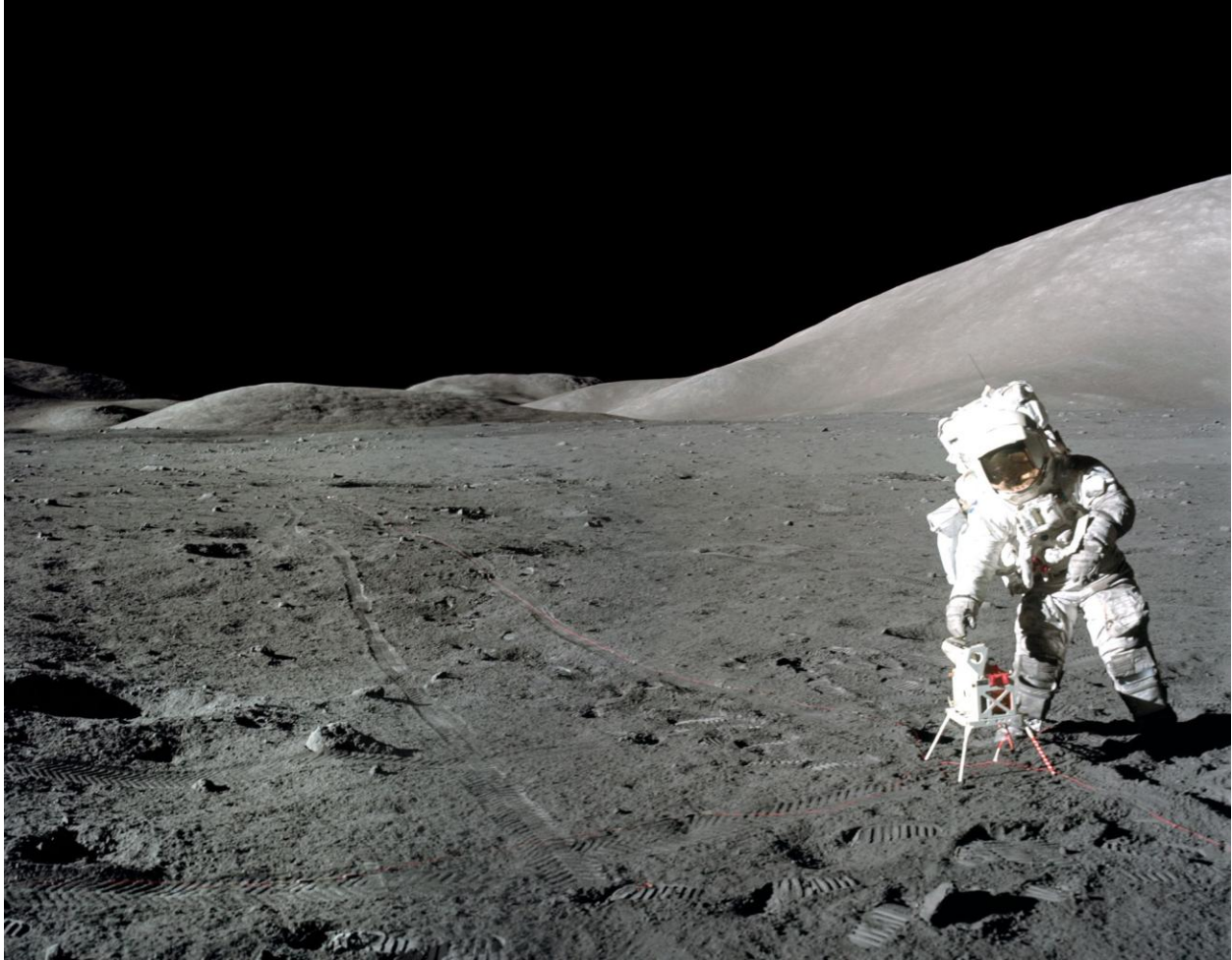
Section 6. The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same, and for any Speech or Debate in either House, they shall not be questioned in any other Place.

No Senator or Representative shall, during the Term for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been increased during such Term; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

Section 7. All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills. Every Bill which shall have passed the House of Representatives, and the Senate, shall, before it becomes a Law, be presented to the President of the

America's Uncommon Sense:
The Founders' View Today

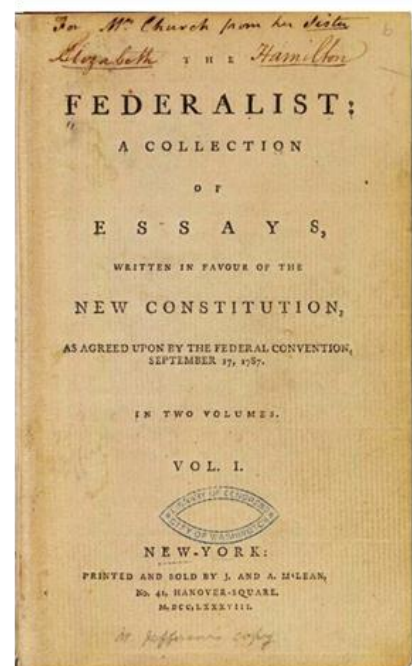
Senator Harrison H. Schmitt



Frontispiece: Apollo 17 Astronaut Harrison H. Schmitt setting up the Surface Electrical Properties experiment shortly after landing in the Valley of Taurus-Littrow on December 11, 1972. He has placed the crossed red antenna wires in the tracks left by the Lunar Rover driven by Astronaut Gene Cernan. Schmitt named the small hill in the left background “Bear Mountain” after a similar feature near his hometown of Silver City, NM. (NASA photo)

The title page from *The Federalist*, a collection of essays on the new U.S. Constitution written by Alexander Hamilton, James Madison, and John Jay. The handwriting on this 1788 First Edition copy: **Top:** “For Mrs. Church from her Sister Elizabeth Hamilton”. **Bottom:** “Mr. Jefferson’s copy”. (From Madison’s Treasures, Rare Books & Special Collections Division, Library of Congress, Washington, D.C.):

http://www.americaslibrary.gov/aa/madison/aa_madison_father_2_e.html



America's Uncommon Sense: The Founders' View Today

America's Uncommon Sense:

The Founders' View Today

by

Senator Harrison H. Schmitt

Harrison H. Schmitt is a former United States Senator from New Mexico as well as a Geologist and the former Apollo 17 Lunar Astronaut— the last American to set foot on the Moon on December 11, 1972.

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Note:

These essays were originally issued as Press Releases seriatim on the dates indicated at the beginning of each piece. Some have since been revised in light of subsequent events. Two tables of contents, one serial and one with essays arranged by subject, are consequently included here.

This book was compiled and edited by:

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1. NEW MEXICO DELEGATION AND THE CONSTITUTION

Harrison H. Schmitt
December 28, 2009

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 5th 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 14th 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 14th Amendment, taken in concert with the “due process” clause of the 5th 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 14th Amendment occurs when States are required to enforce federal laws that violate "equal protection."

The Constitution's 10th 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 5th, 10th, and 14th 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 5th 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.

Harrison H. Schmitt is a former United States Senator from New Mexico as well as a geologist and Apollo 17 Astronaut. He currently is an aerospace and private enterprise consultant and a member of the new Committee of Correspondence.

2. NEW MEXICO DELEGATION AND TSA UNIONIZATION

Harrison H. Schmitt
December 31, 2009

For Immediate Release

Former Senator Schmitt Accuses New Mexico Delegation of Putting Politics Ahead Of National Security

The New Mexico Congressional Delegation now advocates giving union leadership of screeners in the Transportation Security Administration (TSA) the power to control critical decisions in a time of war. They wish to make it possible to hold America hostage to union leadership demands. So reports the Albuquerque Journal of December 31, 2009. What a way to end the year!

Why, all of a sudden, has this issue even arisen? It is politics of the most insidious kind. The events leading up to the failed attempt by an Islamic terrorist to kill 290 people on Christmas Day have nothing to do with TSA or its lack of a confirmed Administrator. Those events have everything to do with a President, Attorney General, and Delegation that refuse to admit that a state of war exists between America and radical Islam. How can the Obama Administration and the New Mexico Delegation say no war exists? Doing so ignores all the terrorist events directed against Americans over the last 50 years and particularly over the last decade.

For the moment, set aside the question of whether or not the Government should be screening ALL air travelers. We know exactly who to profile as po-

tential terrorists with whom we are at war— whether the President and the Delegation wish to call it “war” or not. However we ultimately settle that question, it defies the common sense of most Americans to give the leadership of any group of employees whose activities support national security requirements the power to control national security decisions through work rule demands and through seniority rather than merit-based decisions. Everyone knows that eventually, union leadership will want the power to call strikes to get what they want and this Administration and Congress will be happy to give them that power.

Would we want the power to strike or even to control employee assignments to be held by a union leader representing the Armed Forces, the U.S. Coast Guard, or the Air Traffic Controllers? Clearly, that would be absurd. In this light, even the existing unionization of the Border Patrol and the Customs Service should be revisited.

Why, then, does the Delegation want to give critical national security power to a union leadership of those who protect air travel? In making that argument, the

Delegation ignores the Constitution's edict that the President has primary responsibility for the "common defence". It once again puts the political support of organized labor ahead of the state's and the nation's interests.

The existence of organizations consisting of members of entities like TSA and the Flight Controllers has a strong Constitutional justification in the exercise of the 1st Amendment guarantee of the "right of the people peaceably to assemble, and to petition the Government for a redress of grievances". Such organizations can and should provide insights and advice to management from those who know their jobs best. No constitutional right exists, however, to union-led coercion or intimidation. That is not what the 1st Amendment's use of the word "petition" means.

The Delegation, apparently, also would not support restricting the intense screening of air, train, and bus travelers

to those that match the obvious profile of the foreign and foreign-influenced terrorists that have attacked America. So far, without exception, this profile shows we are at war with radical Islam. We should vigorously act accordingly or we are doomed to successful future attacks on the homeland and our economy. Most detrimentally, current policy results in major, unnecessary restrictions on the liberty of traveling Americans.

A final note worth remembering: Courageous people who watch who else are traveling, and, yes, "profile", constitute our primary defense against travel terrorism.

Harrison H. Schmitt is a former United States Senator from New Mexico as well as a geologist and Apollo 17 Astronaut. He currently is an aerospace and private enterprise consultant and a member of the new Committee of Correspondence.

3. HEALTH CARE AND THE CONSTITUTION #1

Harrison H. Schmitt
January 4, 2010

For Immediate Release

Former Senator Schmitt Outlines Constitutional Health Care Improvement for America

The current Administration and Congressional leadership, by word and deed, believe in overriding the separation of State and Federal powers embodied in the 10th Amendment to the Constitution. They desire to eventually impose national socialist control over the health care of every American. In so doing, they would further erode American liberty and pass massive increases in national debt and future economic distress to present and future generations.

A Constitutional path exists, on the other hand, for health improvement through freeing all individual patients to work directly with health care providers. That path can significantly and rapidly reduce problems and improve care in America's health environment.

Given a choice, most people in the world would come here for health care. Is our health environment perfect? Obviously it is not; but surveys indicate that the health care Americans receive has reached broadly acceptable levels, particularly during the last 60 years. Most Americans clearly oppose radical changes in their current health care.

On the other hand, a formidable list of problems exists for some individuals and in the runaway State and national costs of Medicaid and Medicare. Nonetheless, most wish to address health care inadequacies in a

constitutional and historically American way—relying on individuals far more than government.

Although statements to the contrary are common, the Constitution of the United States cites no right to “health”. Rather, preservation of health clearly lies within the activities **not** enumerated as functions of the Federal Government. Indeed, the people or the States have control of such activities by virtue of the 10th Amendment's statement that “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.”

The current Congressional leadership argues that Congress' power to “provide for the...general welfare” found in Article I, Section 8, permits practically any form of federal healthcare legislation. Congress needs to view the Article I clause in the context of the inclusion of the comparable phrase “promote the general welfare” in the Preamble to the Constitution. That phrase's inclusion in the Preamble was one of several basic reasons for establishment of this form of government and subordinates the Article I Congressional power to other constitutional provisions. Of particular note in this regard are (1) the lack of any Section 8 enumeration of health care among many other proper areas for Congressional intervention and (2)

the combined effect of the 5th and 14th Amendments making legislative imposition of reward or penalty on some individuals and not others unconstitutional by depriving those other individuals of “equal protection of the law.”

The Constitutional path exists for health improvement, and it begins with tax incentives that re-enforce the traditional patient-doctor relationship and allow most individuals to improve their health without government involvement. For example, tax-exempt and inheritable Health Savings Accounts would force down costs by encouraging price-conscious shopping and health-conscious life styles while discouraging unnecessary access to health care providers. HSAs could rapidly replace Medicaid and Medicare if annual vouchers, issued by the States solely for health care as needed, allowed individual responsibility to substitute for bureaucratic irresponsibility.

Tax reform also could increase the supply and quality of future health care professionals. Multi-year tax-deductibility of educational expenses (tax loss carry-forward) would make medical and other professional careers more attractive. Tax-deductions also could apply to insurance purchased by individuals not covered by employers. Such tax-deductions should include coverage of pre-existing conditions, catastrophic and home health care, annual medical examinations, wellness counseling, and vaccinations.

Corporate tax incentives could assure that insurance becomes portable across state lines for American citizens and legal guest workers. For this purpose, insurance should be considered a commodity in interstate commerce under Article 1, Section 8, Clause 3. Discriminatory State insurance policies should not be allowed. Tax policy also

should encourage private research, development, availability and cost reduction in pharmaceuticals, vaccines, devices, and collection and coordination of outcomes data. This policy should include a total restructuring of the federal approval process to emphasize sound science and eliminate political and tort interference.

Tort reform, of course, would go a long way to increasing the supply of health professionals. Threats of continuous streams of lawsuits reaching far beyond rare cases of actual negligence face current and future providers. Clearly, this litigation environment causes many to either leave medicine or reject it as a career choice. Reform, in turn, would reduce insurance costs, waiting times for treatment, and the use and costs of defensive medical procedures. Access to advance treatments also would be encouraged by tort reform. Similarly, costs of drugs, vaccines and devices, and delays in their availability to patients in need would be significantly reduced. Plaintiff compensation, if warranted, must be limited to actual damages to avoid unjustified “lottery” awards. Judicial Standards must encourage Judges to throw out frivolous lawsuits and employ expert panels to advise evaluating the scientific and medical merits of complex suits. Huge fines should be levied on the filing of such suits, if found to be frivolous.

Biomedical research, a traditional American strength, must continue and be further enhanced. In the private sector’s drug and device arena, science, feasibility, and consumer and physician demand, not politics or litigation risk, should drive investment decisions. Also, fundamental biomedical research within the government-funded research community should continue at a steady pace as constitutionally supported by Article I, Section 8, Clause 8. Challenges presented by concentrated populations, ag-

ing, changing battlefield injury and disease profiles, bio-terrorism, drug resistant and species-jumping diseases, and genetic screening justify this promotion of the constitutional “general welfare” through scientific research.

In summary, we do not need an expansion of the heavy hand of government in health care. Rather, we need a major reduction of such interference so that health care availability can be expanded in an environment of free choice. Americans should note that the “unalienable rights” stated in the Declaration of Independence include “life” as well as “liberty and the pursuit of happiness.” “Life,” however, implies something very different than “health.” The right to life coexists with the “liberty” of individual choice of how that individual’s life shall be lived in “the pursuit of happiness.”

No unit of government can constitutionally or morally place itself between the citizen and individual choices relative to health. Government steps on to an unconstitutional, slippery slope when it inserts itself into individual decisions on birth and death. Such “authoritarian” use of age to select who lives or dies far to closely resembles selection on the basis of race, ethnicity, or any other arbitrary criteria.

Harrison H. Schmitt is a former United States Senator from New Mexico as well as a geologist and Apollo 17 Astronaut. He currently is an aerospace and private enterprise consultant and a member of the new Committee of Correspondence.

4. TERRORISM AND THE CONSTITUTION

Harrison H. Schmitt
January 8, 2010

For Immediate Release (Related Release, No. 3, December 31, 2009)

Former Senator Schmitt Ties Congressional and Presidential Dereliction in War on Terror to a Violation of Constitutional Mandates

The Constitution of the United States of America charges the President and Congress, to “provide for the common defence.” Neither entity lives up to this responsibility in spite of both the people and the Constitution being under attack by radical Islam.

Beginning with its Preamble, the Constitution gives clear mandates on the preservation of our liberty against foreign and internal threats. That Preamble declares that the Founders established the Constitution, among four basic objectives, to “provide for the common defence” as well as to “secure the Blessings of Liberty to ourselves and our Posterity.”

To meet these two clearly related objectives, Article II, Section 2 of the Constitution gives the President the power of “Commander in Chief of the Army and Navy.” In addition, Article I, Section 8 states that “The Congress shall have the Power to lay and collect Taxes...” to “provide for the common Defence,..” and “To declare War..., To raise and support Armies..., To provide and maintain a Navy...,” and “To make Rules for the Government and Regulation of the land and naval Forces.” What could be clearer? Both the President and Congress are required to defend the people and liberty and the Congress

has the power to provide the financial means to do so.

Designation of the President as “Commander in Chief” gives that Office explicit authority to determine how to perform the Government’s duty to defend the Constitution and the Nation. Congress, of course, can advise on the adequacy and nature of Presidential initiatives through required budgetary appropriations and Senate confirmation of Cabinet appointees. The Founders clearly intended, however, that there be only one final decision-maker in matters of national security, namely the Office of the President. The Founders’ also intended that Presidents, through the Article I, Section 7, Clause 2, veto power bear full responsibility for success or failure, thus preventing a multitude of “generals” from trying to manage actual military strategies. The Article I, Section 2, Clause 5 power of the House to impeach the President for unconstitutional neglect of the duties of the Office further focuses direct responsibility for national security in that Office.

Together, these provisions of the Constitution underlie nearly two and a quarter centuries of successful, if at times stumbling and mismanaged, efforts to preserve the nation and the liberty of its people from security threats. The Founders appear to have

wanted both tension and joint responsibility to exist between the Executive and Legislature. On the other hand, it defies logic, as well as the Founders' experiences in the Revolution, to conclude that the President, elected by all the voters of the nation, would not have primacy in determining, as Commander in Chief, the specific requirements and actions that would "provide for the common defence." Given this hierarchy of authority in the

Republic, the powers of the Congress that seemingly allow it to second-guess the Commander in Chief should be exercised sparingly.

Relative to our current situation, the Founders did not anticipate election of both a President and a Congress that did not share their constitutional emphasis on national security and the preservation of liberty. These otherwise extraordinarily clairvoyant men and women gave us no clear guidance on how to protect the people from a concentration of political power in like-minded officials – officials with greater concern about ideology and maintaining political power than about the indefinite and successful protection of American freedom and prosperity.

Nor did the Founders anticipate that a President and his Attorney General would not recognize that a long-term state of war exists between the United States and a non-national entity like radical Islam even though Congress had effectively and constitutionally declared such a war in Public Law 107-243. Instead of fighting radical Islam under the recognized rules of war and common sense, the Executive Branch treats terrorism events of that war as "criminal" acts by non-citizens to whom should be given constitutional protections. Also, the Founders did not anticipate that a President would

not recognize continued terrorist attacks on American soil as part of this war, such as the avoidable attacks that occurred at Fort Hood and elsewhere in 2009.

Yesterday, the President rhetorically admitted, "We are at war with Al Qaeda," but gave little indication that the Administration's actions will follow the rhetoric. The President's constitutional responsibilities will not be met until the Administration profiles radical Islamic terrorists rather than targeting all traveling Americans; actively interrogates captured enemy combatants and stops plans to close the state-of-the-art Guantanamo military prison facility; reverses plans to try foreign terrorists in American civilian courts; deals with Iran as a sponsor of Islamic terrorism as well as a nuclear threat; and generally takes the war on terror to the real enemy on a global scale.

The President's and the Congress' disregard for their constitutional mandate to "provide for the common defence" extends beyond their dereliction in the war with radical Islam. This malfeasance includes the (1) Attorney General's prosecution of American warriors acting under orders from the former Commander in Chief; (2) reduction and possible elimination of defenses against terrorist missile attack; (3) neglect of our nuclear deterrence of attacks or intimidation by other nuclear powers; (4) general reduction in the country's defensive capabilities and industrial base relative to current and potential threats; (5) lack of significant action against clandestine importation of weapons of mass destruction; (6) limitation of border efforts to intercept terrorists and illegal aliens entering the country; and (7) intentional weakening of the country's economy needed to support "the common defence" with increased financial dependence on a potential future adversary—China.

The current Congress refuses to force a change in attitude by the Executive through its Article I, Section 8 powers, much less through any thought of impeachment. Affected and threatened parties should explore constitutional challenges to this dangerous inattention to our “common defence.” Those directly killed or harmed by recent attacks or by overly restrictive “rules of engagement” during battlefield actions should have standing before the Courts. If not, we must depend on the American voter to soon awake

to the threats they and their liberty face from the potentially fatal lack of action in the “common defence” by their elected leaders.

Harrison H. Schmitt is a former United States Senator from New Mexico as well as a geologist and Apollo 17 Astronaut. He currently is an aerospace and private enterprise consultant and a member of the new Committee of Correspondence.

5. COMMON DEFENSE ISSUES

Harrison H. Schmitt
January 13, 2010

For Immediate Release (See Related Release No. 4 of January 8, 2010)

Former Senator Schmitt Finds the President and Congress Commit Deadly Sins in Their Neglect of National Security

Since the Nation's founding, the challenges of national security always have been formidable. Separately and collectively, the Constitution puts responsibility for national security squarely on the Congress and the President. Meeting modern security challenges requires both a short and long-term view of threats and a sense of urgency in addition to the "balance" advocated by the current Administration.

All tools necessary to defend and perpetuate the American Republic exist in the Constitution. The Founders got it right. The Preamble obligates the Government to "provide for the common defence." Article I, Section 8, Clause 1, specifically gives Congress the power to make such provisions. And the Oath of Office given in Article II, Section 1, Clause 7, requires that the President "preserve, protect and defend the Constitution". To live up to that Oath, Article II also makes the President "Commander in Chief of the Army and Navy of the United States". Nothing in the Constitution permits the President or the Congress to neglect national security.

Rapid technological change in modern times, and the accompanying proliferation of threats, has immeasurably increased the urgency of addressing security challenges. The Founders, in Article I, Section 8, Clause 8,

anticipated that technological change would alter civilization. That Clause states, "The Congress shall have the Power...to promote the Progress of Science and the useful Arts..." Congress therefore has both the constitutional means and the constitutional obligation to use science and engineering as well as its other powers to "provide for the common defence".

Unfortunately and inexcusably, eight deadly and unconstitutional sins currently underlie a pervasive neglect of national security by those responsible for it, namely, the President and the Congress. These sins threaten the near and long-term security of the American people, their economy, and their critical democratic allies.

First, the President and the Congress have intentionally and aggressively weakened the nation's economy by focusing recession recovery policy on deficit spending, a weak dollar, more regulatory government, and future tax increases. Current policy ignores historical proof that tax cuts and less government stimulate economic activity and employment in a free enterprise system. National security depends on the strength of the economy, but future inflation, government control of major industries and financial institutions, heavy-handed regulation, and massive national debt destroy economic vi-

tality. Financial dependence on China's purchase of our national debt constitutes one of the most serious outcomes of this economic malfeasance. An authoritarian China already looms as our foremost economic competitor, and the rapid expansion and modernization of its military shows it will be a primary future threat to American liberty and security.

Second, national leadership fails to fully recognize and act on the fact that radical Islam is at war with America and Western Civilization. Radical Islam fights this war on American soil as well as elsewhere in the world without an aggressive and sustained response by the Commander in Chief or by the Congress (see previous Press Release No. 4).

Third, the Attorney General of the United States plans to prosecute Americans acting under orders by the former Commander in Chief. Those orders were to interrogate enemy combatants to avoid a repeat of the attacks of September 11, 2001. Combined with the decision to prosecute prisoners of war in civilian courts, prosecution of intelligence agents gives treasonous aid and comfort to those who attack Americans and provides clear incentives for additional attacks. These prosecutions politicize the intelligence agencies and will disclose classified sources and methods. Such prosecutions also will inhibit the live capture of intelligence assets on the battlefield, the objective analysis of intelligence data, and interagency cooperation and action based on such analysis. Legal proceedings against American patriots and civilian trials for prisoners of war show regression to a pre-9/11 mindset by the President and Attorney General. Terrorist acts of 2009 and tepid response to them relate directly to this mindset.

Fourth, the President and the Congress have put no priority on protecting the na-

tion's southern border in order to intercept terrorists, illegal aliens, and outlawed drugs. The scale of operations by the Border Patrol, the National Guard, and trained volunteers has not expanded sufficiently to meet the increased threat level. Further, the President and the Congress appear to ignore the potential for the ongoing and extraordinarily violent drug war in Mexico to cause the collapse of that country's social order and to spill over the border into the American Southwest. Nor have plans been created to manage a humane, necessary, and effective guest worker program, a traditional component of the American economy and an unfiltered foreign aid assist to Mexico.

Fifth, under Presidential orders, the Department of Defense has de-emphasized long range anti-missile defenses necessary to counter future terrorist attacks from Iran and its allies, including North Korea and, potentially, Venezuela. Such defenses also counter intimidation by China, Russia, or other nuclear-armed entities directed at North America and allies in Europe and Asia. Why one political party does not want to protect Americans against missile attack has remained a philosophical mystery since the 1970's.

Sixth, the President's budget and Congressional appropriations do not provide for the maintenance and modernization of the nation's nuclear deterrence. The potential of attack or intimidation by other, more modernized and less democratic nuclear powers remains a reality and must be countered visibly and convincingly. Nuclear arms reduction negotiations with Russia, in the absence of China, India, Pakistan, France, the United Kingdom, and Israel, make no common sense even if we could expect all countries to comply with negotiated agreements. Such Pollyanna efforts fly in the face of the horrible record of compliance by our adversaries

with past arms reduction treaties. These efforts rarely have served long-term American security interests.

Seventh, no indication exists that the President and the Congress plan to provide serious defenses against other means that exist to deliver nuclear, biological, and chemical weapons of mass destruction. The most serious of these threats results from the use of the United States as a land bridge for thousands of containerized cargo units moving each day between two oceans as well as for delivering goods throughout the country. Customs conducts only limited inspection of these units and lacks state-of-the-art tools for this purpose. Also, development has languished on scanners for detecting explosive, chemical, biological, and nuclear materials offshore before entry to our ports. In addition, no effective defense exists or is planned against offshore launches of cruise and depressed trajectory missiles.

Eighth, the President and the Congress have led a general reduction in the country's defensive capabilities and industrial base relative to current and clearly predictable global threats. Preparations for asymmetric warfare by China and radical Islam represent the greatest threat to the successful employment of American defensive assets if under attack. If we wish to avoid the terrible option of nuclear confrontation to preserve the Nation, then naval, air, ground, and space forces must be able to compete directly and successfully under an umbrella of asymmetric warfare defense strategies, tactics, and countermeasures. Having defensive and of

defensive capabilities directed at thwarting cyber attacks, GPS disruption, intelligence satellite destruction, and communications outages stand out as possibly most critical in this regard. The recent disclosure that national defense spy satellites have been diverted from their mission of gathering vital intelligence to monitoring natural climate variations illustrates starkly that this Administration does not take its constitutional "common defence" responsibilities seriously.

Current and future threats to liberty and the American people have grown, not diminished since the end of the Cold War. Congressional reaction, and now that of the current President, has been to act as if the opposite were true. Instead of building economic, military, and intelligence systems that can "provide for the common defence", the President and the Congress ignore security while tying down future generations to stifling debt and continuous economic stagnation in order to perpetuate their political power. The Constitution provides an electoral mechanism to eliminate this selfish neglect. The American people must begin to use the Constitution to protect liberty and themselves.

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6. ECONOMY AND CONSTITUTION

Harrison H. Schmitt
January 18, 2010

For Immediate Release (See Related Release No. 1 of December 28, 2009)

Former Senator Schmitt Declares Unconstitutional Actions by the President and Congress Stagnate the Economy

The provisions of the Constitution of the United States contain everything necessary to perpetuate liberty and provide economic prosperity in the American Republic. Again, the Founders got it right – their politically myopic heirs in the 21st Century have not.

Unconstitutional interference in the mortgage market place brought the U.S. economy to its knees in 2008. The lack of basic financial education of our most financially vulnerable citizens exacerbated the effects of this political malfeasance. Nothing in Article I, Section 8 of the Constitution gives Congress the power to permit agencies of government to extort sub-prime lending by financial institutions. Nor does Congress have the constitutional power to create the Federal National Mortgage Association (Fannie Mae) and Federal Home Loan Mortgage Corporation (Freddie Mac) or to give them the means to assume obligations sub-prime lending. Congress does not even have the constitutional power to put the government anywhere close to housing markets.

Article 1, Section 8 of the Constitution specifies, that is, enumerates and limits the powers of the Congress. Even if the four corners of the Constitution as first ratified did not make clear this limitation on Con-

gress, the Founders reiterated their intent in the 10th Amendment, 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.” These facts deserve repeating, again and again.

The Constitution, therefore, contains no specified, enumerated powers to regulate financial institutions in the United States unless those institutions operate in interstate commerce (Article I, Section 2, Clause 3). Even in the case of institutions involved in interstate commerce, under the 5th and 14th Amendments, financial regulation must be such that it provides “equal protection of the laws” to all Americans and not give preferential financial terms to some and not others. Congress clearly has not provided equal protection to all in the case of the sub-prime lender extortion and subsidization. Sub-prime mortgages benefit only those who could not afford mortgages at market rates.

Were the Nation’s private financial institutions blameless in the sub-prime meltdown? Definitely not. Those institutions should have stood up to government and shouted to the rooftops and in the courts that they would not be intimidated by Congress and its agent, Acorn, and that Fannie Mae and Freddie Mac interference in the markets

and the Federal Reserve's abnormally low interest rates were economically unsound. The financial business sector abandoned market principles and joined the Government in a rush to the economic disaster many predicted for most of the last decade.

With the collapse of this unconstitutional, sub-prime house of cards, Congress also has unconstitutionally provided the resources and authorization for the Executive to bailout failing financial institutions and other corporations while not providing equal protection to their competitors, customers, and shareholders. Bankruptcy law and procedures have been constitutionally provided under Article I, Section 8, Clause 4, and should have been allowed to work. The damage to the economy and to private institutions would have been much more contained and much less far-reaching than we have experienced.

Further, Congress has allowed the Executive to unconstitutionally assume the power to control the business decisions of major private corporations, to limit the salaries of their employees, and to generally exert authority on private enterprises outside the confirmed authority of the President's Cabinet. Contrary to Article II, Section 2, Clause 2, these powers have been vested by the President in appointees ("czars") who have not been presented to the Senate for its "Advice and Consent," that is, confirmation. Now, with last week's announcement that he will seek to selectively tax or apply a fee to large banks, we see the President's unconstitutional drive toward national socialism on naked display. No pretense remains of adhering to equal protection of the law.

The Founders created the Constitution to control government while, at the same time, providing for the benefits stated in its Preamble. They had no intention of unne-

cessarily enabling government, or the politicians and bureaucrats that populate it, to take over the responsibilities of the States and the people. Indeed, they adopted the first ten Amendments to further restrict the power of government. The Founders clearly understood that under an umbrella of liberty, and the free enterprise system liberty engenders, government cannot create wealth. They knew that, instead, government confiscates wealth and, in so doing, erodes liberty. Wealth the government takes from its citizens in the form of taxes and borrowing reduces the availability of wealth that can create new enterprise and employment.

What, then, could a new 2011 Congress do to fix the economic mess created by decades of political manipulation, excessive taxation and debt creation, and more recently by the imposition of national socialist edicts on free enterprise? Tax law, regulatory law, and the burdens of national socialism constitute the three most important arenas of constitutional encroachment to fix and fix quickly. Lets consider specifically, for the moment the general constitutional aspects of tax law, clearly the most important issue to consider at this point of Congressional and Presidential mismanagement of the economy.

Article I, Section 2, Clause 1, gives Congress the "Power To lay and collect Taxes, Duties, Imposts, and Excises..." The 16th Amendment clarified this power by opening all incomes to taxation, "from whatever source derived." The requirement of Amendments 5 and 14 for "equal protection of the law" provides a critical limitation on what types of taxes can be levied. Even the 16th Amendment's clarification that all "incomes" could be taxed by Congress, cannot be construed to alter equal protection requirements.

Equal protection limits on Congress' power to tax mean that the only constitutional "income" tax would be a flat percentage levied on personal and business income. Logic and precedent define "income" as the difference between revenue or salary and the cost of obtaining that revenue or salary. Taken in their full constitutional context all taxes that violate equal protection by discrimination against individuals to benefit another individual or group are unconstitutional. Currently, such unconstitutional federal and state taxes include progressive income taxes, estate taxes, double taxation of dividends and foreign earnings, and capital gains taxes not indexed to inflation.

Additionally, Congress' power to tax does not mean it must apply a tax on all categories of income. Some income can be exempt from taxation so long as all earning Americans have the possibility of benefiting. In particular, the "common welfare" would be served by a robust economy if income saved or invested were exempt from taxation in order to increase capital available for business growth and employment. Some such savings and investments could be directed toward providing self-insured health care, retirement, and children's education during the long, multi-decade, but absolutely necessary transition from government managed health, retirement, and educational loan systems, respectively.

Most tax deductions and tax rebates, if unavailable to all taxpayers, fall into the same unconstitutional barrel, as do discriminatory income taxes. Some deductions would be permitted in the exercise of specific powers granted to Congress in Article I, Section 8. Specifically, Congress can con-

sider discriminatory tax deductions to (1) "...raise and support Armies..." [Clause 12], and (2) "...provide and maintain a Navy..." [Clause 13]. For example, deductions would be constitutional if they advance America's technological prowess or maintain the industrial base to support national security requirements.

Finally, Congress has the constitutional power to collect taxes by any means that satisfy equal protection of the law. The only clearly constitutional means for collection would appear to be that all earners pay their taxes on the same date certain each year. This brings into constitutional question Congress' requirement both for withholding taxes from wage earners and for requiring estimated tax payments from businesses and the self-employed. Certainly public policy and Congressional fiscal discipline would be served if everyone had to plan to pay their taxes once a year rather than having them taken by stealth or before the full benefit of earnings can be realized.

Concerned Americans have their economic work cut out for them if they retake control of the Congress through the elections of 2010. The task to recover lost economic liberty will be extraordinarily difficult, but not impossible. Then, what choice do liberty and America have but to "make it so"?

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7. SPACE POLICY AND THE CONSTITUTION #1

Harrison H. Schmitt
February 1, 2010

For Immediate Release

Former Senator Schmitt Finds New Space Policy Cedes Moon to China, Space Station to Russia, and Liberty to the Ages

The Administration announced a new Space Policy in 2010, after a year of morale bending clouds of uncertainty. The lengthy delay, the abandonment of human exploration, and the wimpy overall thrust of the policy indicates that the Administration does not understand, or want to acknowledge, the essential role space plays in the future of the United States and of liberty. Antagonism against America's demonstration of predominance in space continues.

Expenditures of taxpayer provided funds on space related activities find constitutional justification in Article I's power and obligation to "provide for the Common Defence." This power relates directly to the geopolitical importance of space exploration at this frontier of human endeavor. A vibrant space program sets the modern geopolitical tone for the United States to engage friends and adversaries in the world as well as building wealth, economic vitality, and educational momentum through technology and discovery. For example, in the 1980s, the leadership of the former Soviet Union believed America would be successful in creating a missile defense system because we succeeded in landing on the Moon and they had not. Dominance in space clearly constituted a major factor leading to the end of the Cold War.

With a new Cold War looming before us, involving the global ambitions and geopolitical challenge of the national socialist regime in China, President George W. Bush attempted to put America back on a course to maintain space dominance. What became the Constellation Program comprised his 2002 vision of returning Americans and their partners to deep space by putting astronauts back on the Moon, going on to Mars, and ultimately venturing beyond. Unfortunately, like all Presidents since Eisenhower and Kennedy, the Bush Administration lost perspective about space. Inadequate budgeting and lack of Congressional leadership and funding during Constellation's most important formative years undercut Administrator Michael Griffin's effort to fully implement the Program beginning in 2004. Delays due to this period of under-funding have rippled through national space capability until we must retire the Space Shuttle in 2011 without a replacement to access to space. Now, we must pay at least \$63 million per seat for the Russians to ferry Americans and others to the International Space Station. How the mighty have fallen.

Not only did Constellation never receive the Administration's promised funding, but the Bush Administration and Congress required NASA (1) to continue the construction of the International Space Station (badly

under-budgeted by NASA Administrator O’Keefe, the OMB, and ultimately by the Congress), (2) to accommodate numerous major over-runs in the science programs (largely protected from major revision or cancellation by narrow Congressional interests), (3) to manage without hire and fire authority (particularly devastating to the essential hiring of young engineers), and (4) to assimilate, through added delays, the redirection and inflation-related costs of several Continuing Resolutions. Instead of fixing this situation, the current Administration did not retain Administrator Griffin, the best engineering Administrator in NASA’s history, and now has cancelled Constellation. As a consequence, long-term access of American astronauts to space rests on the improbable success of an untested plan for the “commercial” space launch sector to meet the increasingly risk adverse demands of space flight.

Histories of nations tell us that an aggressive program to return Americans permanently to deep space must form an essential component of national policy. Americans would find it unacceptable, as well as devastating to human liberty, if we abandon leadership in deep space to China, Europe, or any other nation or group of nations. Potentially equally devastating to billions of people would be loss of free nations’ access to the energy resources of the Moon as fossil fuels diminish on Earth.

In that harsh light of history, it is frightening to contemplate the long-term, totally adverse consequences to the standing of the United States in modern civilization if the current Administration’s decision to abandon deep space holds for any length of time. Even its commitment to maintain the International Space Station using commercial launch assets constitutes a dead-end for Americans in space. At some point, now set

at the end of this decade, the Station would be abandoned to the Russians or just destroyed.

What, then, should be the focus of national space policy in order to maintain leadership in deep space? Some propose that we concentrate only on Mars. Without the experience of returning to the Moon, however, we will not have the engineering, operational, or physiological insight for many decades to either fly to Mars or land there. The President suggests going to an asteroid. As important as asteroid diversion from collision with the Earth someday may be, just going there hardly stimulates scientific discovery anything like a permanent American settlement on the Moon! Other means exist, robots and meteorites, for example, to obtain most or all of the scientific value from a human mission to an asteroid. In any event, returning to the Moon inherently creates capabilities for reaching asteroids to study or divert them, as the case may be.

Returning to the Moon and to deep space constitutes the right and continuing space policy choice for the Congress of the United States. It compares in significance to Jefferson’s dispatch of Lewis and Clark to explore the Louisiana Purchase. The lasting significance of Jefferson’s decision to American growth and survival cannot be questioned. Human exploration of space embodies the same basic instincts—the exercise of freedom, betterment of one’s conditions, and curiosity about nature. Such instincts lie at the very core of America’s unique and special society of immigrants.

Over the last 150,000 years or more, human exploration of Earth has yielded new homes, livelihoods, know how, and resources as well as improved standards of living and increased family security. Government has directly and indirectly played a

role in encouraging exploration efforts. Private groups and individuals take additional initiatives to explore newly discovered or newly accessible lands and seas. Based on their specific historical experience, Americans can expect that benefits comparable to those sought and won in the past also will flow from their return to the Moon, future exploration of Mars, and the long reach beyond. To realize such benefits, however, Americans must continue as the leader of human activities in space. No one else will hand them to us without requiring a huge economic or political price.

With a permanent resumption of the exploration of deep space, one thing is certain: our efforts will be as significant as those of our ancestors as they migrated out of Africa and into a global habitat. Further, a permanent human presence away from Earth provides another opportunity for the expansion of free institutions, with all their attendant rewards, as humans face new situations and new individual and societal challenges.

Returning to the Moon first and as soon as possible meets the requirements for an American space policy that maintains deep space leadership, as well as providing major new scientific returns. Properly conceived and implemented, returning to the Moon prepares the way to go to and land on Mars.

This also can provide an infrastructure for space exploration in which freedom-loving peoples throughout the world can participate as active partners.

Again, if we abandon leadership in deep space to the any other nation or group of nations, particularly a non-democratic regime, the ability for the United States and its allies to protect themselves and liberty for the world will be at great risk and potentially impossible. To others would accrue the benefits—psychological, political, economic, and scientific—that the United States harvested as a consequence of Apollo’s success 40 years ago. This lesson has not been lost on our ideological and economic competitors.

American leadership absent from space? Is this the future we wish for our progeny? I think not. Again, future elections offer the way to get back on the right track.

Harrison H. Schmitt is a former United States Senator from New Mexico as well as a geologist and Apollo 17 Astronaut. He currently is an aerospace and private enterprise consultant and a member of the new Committee of Correspondence.

8. DEBT, TAXES, AND THE CONSTITUTION

Harrison H. Schmitt
February 10, 2010

For Immediate Release (See Related Release No. 6 of January 18, 2010)

Former Senator Schmitt Warns Of Unsustainable Consequences of Extreme National Debt and Tax Burdens

What are these people in Washington thinking?! Do they believe the rest of us can't count? Or don't count! The national debt already stood far too high at about 40% of gross domestic product (GDP) in 2009. Now, the President proposes that the FY2011 budget create a total national debt of at least \$14.3 trillion, or about 70% of GDP! On top of this, he calls for \$2 trillion in tax increases – the surest way to further sap the strength of the economy, increase unemployment, and quickly drive debt to over 100% of GDP and the country into another Great Depression. Call this budget “the audacity of despair!”

How does massive national debt hurt? Let us count the ways. As every family knows, debt limits “liberty and the pursuit of happiness,” that, along with “life,” are “unalienable” natural rights reserved to the people under the 9th Amendment to the Constitution. Debt puts someone else or some other nation, directly or indirectly in control of all major decision-making. Debt, like printing money, adds to the national money supply with its inevitable inflationary result. Debt, in short, destroys financial flexibility and confidence.

National borrowing also takes financial fuel from the private sector where it would be used to create jobs and personal and na-

tional wealth. Diverting that fuel toward increasing the size and influence of government has little or no overall effect on jobs and wealth creation. As national financial weakness increases, adding more debt will require paying higher interest when lenders perceived that the risk of default has increased. Artificially low interest rates have caused the interest on the national debt to decrease from \$450 billion in 2008 to and estimated \$350 billion in 2010; but these low rates cannot be sustained. Future interest payments on an unchecked and rising national debt can be expected to be over \$500 billion - more than one-third of total annual federal expenditures!

How do massive tax increases hurt everyone? Taxes of any kind, even necessary ones, decrease basic freedoms of choice. Further, income taken from individuals and businesses to fund ever-larger government cannot be used to increase consumer demand or job creation to meet that demand. It is as simple as that. How many times must we learn that tax cuts constitute the only way to grow private sector jobs and incomes and get out of a recession? Did the great economic expansions following the Kennedy, Reagan, and Bush tax cuts teach us nothing? Had Congress restrained its spending habits and these three Presidents used the veto power more vigorously and repeatedly,

Americans would have benefited even more from these previous tax cuts. Even more fundamentally, taxes and tax increases that are not shared evenly across all income earners violate the 5th and 14th Amendments' requirement for "equal protection of the law" as well as dilute the rights of the people reserved under the 9th Amendment.

The lunacy of the President's budget proposals outshines even the irresponsibility and unprecedented economic and employment disaster of his first year in office. As measures of that calamity, true unemployment has hit at least 17% and the Federal Government now spends 25% of what Americans produce. The proposed FY2011 budget will be ripe for constitutional challenge before the Supreme Court if authorized, appropriated, and signed into law at a fraction of proposed expenditures, tax increases, and debt. It also would call for the 2010 election defeat of any Representative or Senator casting a vote in support.

Implicitly, Congress has the power to borrow money to pay for the legislatively authorized activities of the United States Government. Article I, Section 8, Clause 1 give Congress the "Power To lay and collect Taxes, Duties, Imposts, and Excises, to pay debts..." Having this power, however, does not relieve Congress of its constitutional duties to "provide for the Common Defence and general Welfare" also found in Clause 1. The burden of debt and taxes that would accompany this FY2011 budget condemns Americans and their economy to Carter-era stagnation, inflation, and worse. Higher taxes and more debt cannot be sustained, either logically or mathematically. This hardly constitutes legislative action that provides "for the general Welfare!

Congress' approval of debt, expenditures, and taxes anywhere near the levels

proposed by the President not only prevents adequate expenditures on national security requirements but allows China, our principle future adversary, to hold massive amounts of our debt, currently estimated to be over three quarters of a trillion dollars. These increasing holdings by China will continually threaten both our economy and our flexibility in preserving our national interests and access to strategic energy and other resource supplies throughout the world.

The President has comparable if not greater culpability than the Congress for these unconstitutional extremes in fiscal policy. The Preamble to the Constitution obligates the President to "provide for the common Defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity." Further, his Oath of Office binds him to "preserve, protect and defend the Constitution of the United States." The FY2011 expenditure, debt, and tax proposals, if enacted into law, neither "provide for the common defense" nor "preserve, protect and defend the Constitution..." A new Congress must take a formal look at the President's violation of his oath and Constitutional duties.

Under this President and Congress, we will see both the dangerous expiration of previous individual and business tax cuts as well as the imposition of even higher levies of historic proportions. Disguised through higher consumer costs, the new taxes on business eventually are paid by individuals buying goods and services. These rising taxes, as well as their increasing complexity, will stifle individual enterprise and remove the financial incentives that drive the nation's human core of innovation, economic motivation, small business formation, and job creation.

Assuming massive change as a result of the 2010 Congressional elections, in what may be the last chance to halt this juggernaut toward national socialism, what should a new majority in Congress do? America requires several critical long-term initiatives that will begin a true and lasting economic recovery. The first, and easiest step: Stop all federal bailouts and so-called stimulus funding and recover as much of what has been wasted as possible. Let the market and bankruptcy courts take over from here as probably could have been done in 2008 and 2009 with much less harm than two Administrations have done.

The second and most essential step: Stop digging deeper into this financial hole of recession, stagnation, and future inflation. This will not be easy as the shovels are many, and they have been wielded for 75 years. Any changes, though, will have to be significant, beginning with a freeze on entitlement funding at 2010 levels. Still, changes must be gradual to avoid social disruption due to the long dependence of so many on the digging. Unfunded mandates, that is, permanent entitlements, constitute the largest and most threatening shovels, particularly Medicare, Medicaid, and Social Security. Reform of these various programs can be accomplished by a combination of tax-exempt savings and tax-deductible private insurance that puts responsibility for limiting expenditures in the hands of beneficiaries.

History has shown the success and popularity of individually directed and inheritable, tax-exempt savings accounts, even those specifically targeted at healthcare and retirement. The combination of tax incentives for saving with the government's per capita contribution of what would have otherwise been spent on the entitlement would rapidly grow accounts to an actuarially responsible

limit. As accounts grow, the taxpayer's annual contribution to each would decrease. At the same time, Congress has the constitutional power under the Article I, Section 8, Clause 1, "general Welfare" power to allow all Americans to have tax-deductible private insurance for catastrophic or long-term healthcare and for longer than normal retirement. In this context and to let competition reduce costs, Congress should exercise its constitutional power to regulate all insurance as part of interstate commerce rather than allowing States to prevent interstate insurance.

The third and most compassionate step: Provide tax incentives for private investment and job creation to begin filling our financial hole as fast as possible. Start with rejecting or repealing any new taxes proposed in the FY2011 budget; making the 2001 tax cuts permanent; cutting marginal and capital gains tax rates even further; and providing instant depreciation of capital expenses. Next, develop a transition schedule to a flat tax on income to restore the constitutionality of our tax system. Finally, we should repeal any taxes on savings, investment, inheritance, and charitable giving, eventually benefiting all Americans. These tax policy actions, when combined with a vast increase in private capital from savings and insurance-based reform of entitlements, would begin a rapid economic recovery and give the momentum of confidence and trust to a new era of prosperity for Americans.

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9. HEALTH CARE AND THE CONSTITUTION #2

Harrison H. Schmitt
February 15, 2010

For Immediate Release (See Related Release No. 3 of January 4, 2010)

Former Senator Schmitt Finds Healthcare Proposals Unconstitutional

The “unalienable rights” stated in the Declaration of Independence, as described previously, include “life” as well as “liberty and the pursuit of happiness.” “Life,” however, implies something very different than “health.” The right to life coexists with the “liberty” of individual choice of how life shall be lived in “the pursuit of happiness.” The Constitution of the United States cites no right to “health.” Rather, preservation of health clearly lies with the people within the activities not enumerated as functions of the Federal Government. The 10th Amendment gives the people or States control of health.

Current Congressional leadership and the President remain intent on the impossible task of managing 16 percent of the American economy we call “healthcare.” They argue that Congress’ power to “provide for the...general Welfare” found in Article I, Section 8, Clause 1, permits any form of federal legislation. The full Article I phrase, in fact, reads, “provide for the common Defence and general Welfare.” Following Clauses limit the specific powers of the Congress in regard to the common defense and general welfare, but none give Congress power to do anything it decides is politically or ideologically expedient. This phrase also must be viewed in the context of the more inclusive phrase “*promote* the general welfare” in the Preamble to the Constitution.

That phrase in the Preamble sets out one of several basic reasons for the establishment of our form of government, and it subordinates the Article I Congressional power to other constitutional provisions. Of particular note in this regard are (1) the lack of any Section 8 enumeration of healthcare among other specifically stated areas for Congressional intervention and (2) the combined effect of the 5th and 14th Amendments that make unconstitutional the legislative imposition of reward or penalty on some and not on others, thereby depriving those others of “equal protection of the law.”

The constitutional bounds of the Constitution nonetheless include everything necessary for Americans to have superior healthcare choices and delivery. Americans only need to have broadly applicable income tax deductions for health insurance and insurance providers need to be able to compete across state lines. Lower cost insurance coverage then could be purchased and tailored to individual needs, including income levels, pre-existing conditions, home health care, hospice care, and so on. Congress could further lower healthcare and insurance costs by giving the Courts the authority to limit tort awards in alleged malpractice cases to actual, provable damages and to substantially fine and/or disbar attorneys that bring frivolous or fraudulent suits.

In addition to the unconstitutionality of mandating health reform by selective prohibition and regulation, specific provisions of current proposals add constitutional insult to injury and should not be part of any legislation. Some proposals, enumerated further below, violate provisions of several amendments to the Constitution, specifically, equal protection (5th and 14th), due process (5th), warrantless searches of papers (4th), criminal prosecution rights (6th), and the right for private patients and physicians to associate (9th).

Insurance Mandates: Congress has no specific or general welfare power under Article I, Section 8, to mandate that all Americans use their incomes to purchase anything, much less health insurance. Nor can the power of Congress to regulate interstate commerce under Clause 3 provide constitutional justification for federally regulated insurance unless it requires States to allow insurance companies to compete across state lines. Even then, regulation must be restrained regulation of “commerce” and not unconstitutional mandates on the insured. To make matters worse, those who do not wish to purchase insurance would be deprived of equal protection under the 5th and 14th Amendments. Further, the mandate would confiscate private property (money) without just compensation as required under the 5th Amendment. Nor can the States mandate the purchase of insurance due to the same restrictions of the 5th and 14th Amendments.

Criminalization of Non-Compliance: Proposed criminalization of both an individual’s lack of health insurance and the purchase of health insurance above a government imposed limit violates the 6th Amendment without providing for the extensive and far-reaching protections required for “all criminal prosecutions.”

Prosecutions: Some Congressional proposals require that private contracts between patient and insurer contain specific man-

dated coverage, violating the 4th Amendment right of the people to be secure in their “...papers...against unreasonable searches and seizures...”. Without a constitutionally valid warrant, the government has no power to access what is in a contract (paper or oral) between an American and his or her insurer.

Taxation of Mid-Level Incomes: Proposed new income taxes to be imposed on the few to subsidize the many, and to cover the vast administrative costs of government health-care bureaucracies, violate equal protection under the 5th and 14th Amendments.

Free Association: Many Congressional proposals trample the rights to privacy and free association protected by the 9th Amendment by inserting government review and control between a private patient and his or her doctor. The 9th Amendment states, “The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.” The “certain rights” referenced by this Amendment, clearly include those specified in the Bill of Rights. Those “others retained by the people” logically would embrace all naturally encompassing, or intensive, human rights of a free people, for example, the “unalienable rights of life, liberty, and the pursuit of happiness,” identified by the Declaration of Independence. Other such intensive rights include free association, as well as privacy, education, travel, communication, and thought, in other words, rights that inherently belong to humans as a species. Activities like healthcare that relate only to the voluntary exercise of intensive rights clearly would not be included as a “right.”

Mandated State Benefit Exchanges: Congress would require the States to legislate and regulate health benefit exchanges to oversee insurers’ allocation of benefits to subsidized patients. Absent State action, the

federal government would set up and manage an exchange. This coercive mandate on the States violates both nature of the federal system of government envisioned by the Founders and the specific rights of the States and the people spelled out in the 10th Amendment. As James Madison put it, "...it is to be remembered that the general government is not to be charged with the whole power of making and administering laws. Its jurisdiction is limited to certain enumerated objects."

State Earmarks: With some of its proposals, Congress would selectively exempt some States from healthcare cost payments and related burdens that would be imposed on other States. State earmarks clearly run roughshod over both the general welfare rationale for the Constitution, stated in the Preamble, and the general welfare restrictions on the Congress in Article I, Section 8. On top of this travesty, the people of States not favored by the bill would be deprived of 5th and 14th Amendment equal protection.

Insurance Companies as Utilities: Directly and indirectly, Congress proposes to herd insurance companies into a stable of public utilities. In so doing, Congress not only illogically assumes that insurance constitutes a natural monopoly, like a local power company, but fails to provide for a market rate of return to the companies and their shareholders. Insurers would be limited by law to spending only ten percent of revenues on their actual administrative costs. At the same time, the government would establish minimum standards of care over which the "insurance utility" would have no control as to costs, administrative or otherwise. In addition to the economic lunacy of this proposal,

the unconstitutionality of this charade lies in the 5th Amendment's right not to have "private property" be taken for public use without just compensation."

Limitation on Drug and Device Costs: Congress directly and indirectly proposes to mandate limitations on the costs of drugs and devices. Without the ability to recover the costs of development, testing, and regulatory approval, drug and device companies will be unable to continue vigorous research and development efforts that potentially benefit everyone. Such Congressional restrictions are at a minimum adverse to the intent of Article I, Section 8, Clause 8 that gives Congress broad power to "promote the Progress of Science and the useful Arts." At a maximum, Congress has no enumerated constitutional power to impose restrictions of this nature on selected private entities, either in Article I or under the equal protection mandate of the 5th and 14th Amendments.

Although the final provisions of future attempts to socialize healthcare remain uncertain, Americans must stay forever on guard in the protection of both their liberty and specific Constitutional limitations on government power. The elections of 2010 are a place to once again successfully demonstrate that duty to the future and humankind.

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10. CLIMATE AND THE CONSTITUTION #1

Harrison H. Schmitt
February 22, 2010

For Immediate Release

Former Senator Schmitt Faults Motivations for Climate Legislation, Loan Guarantees, and Regulation

Americans should think long and hard about their children's future before giving up liberties and incomes to politicians in Washington and at the United Nations in the name of "doing something" about climate change. Given how little we actually know about climate, as well as great uncertainties in what we do know, the President, regulators, and Congress have chosen an extraordinarily dangerous path of unconstitutional usurpation of the rights of the people and the constitutionally reserved powers of the States.

Climate change assumptions rather than facts, and computer modeling rather than real-world observations, underpin the Government's efforts to restrict American liberties and confiscate trillions of dollars of American income. The scientific rationale behind this proposed massive intrusion into American life requires more than a "consensus" of like-minded climate analysts and bureaucrats. It needs to be right.

Recent disclosures and admissions of scientific misconduct by the United Nations and advocates of the human-caused global warming hypothesis shows the fraudulent foundation of this much-ballyhooed, but non-existent scientific consensus about climate. Supposedly "scientific" advocates ac-

tually used a mathematical trick to hide a real decline in global temperature between 1961 and 2000. Still, the Environmental Protection Agency, the Department of Energy, the Securities and Exchange Commission, and other Government agencies persist in over-stepping their regulatory authority to jam climate related requirements into our lives and economy at the expense of liberty, jobs, and incomes. Federal control of energy production and use, advocated by special "climate" interests, will have a vanishingly small effect on slowing three and a half centuries of very slow, erratic, but natural global warming.

Prudent protection of local environments by the States and the people has justification in the 9th Amendment's protection of natural rights, including "Life, Liberty and the Pursuit of Happiness" as formalized in the Declaration of Independence. Further, the 10th Amendment leaves to the States all governance responsibility for environment as no direct or indirect mention of it exists in the Constitution. A long-term federal and commercial agenda to gather power and profit in the name of "environment" at the expense of liberty, therefore, has no moral or constitutional foundation. Only research on climate and other aspects of the earth sciences and engineering find justification in

the Constitution by virtue of a strong constitutional foundation in the Preamble's mandated promotion of the "common Defence and general Welfare." [See Essay No. 35]

The constitutional relationship between climate-related taxation and regulation, on the one hand, and national security and economic health, on the other, demands close examination. Meeting the constitutional requirement in the Preamble and Articles I to "provide for the common Defence and the general Welfare" requires a strong economy and ready access to abundant energy. Efforts to unconstitutionally limit energy production and tax carbon emissions would clearly adversely affect the economy and thereby limit the Nation's ability to counter potential adversaries or direct attacks. The President and Congress already have intentionally and aggressively weakened the nation's economy and undermined the general welfare by focusing recession recovery on deficit spending, a weak dollar, more heavy-handed regulations, and future tax increases. A carbon emissions cap and tax on energy production and use further jeopardizes the economy and our ability to respond to security threats or to add new jobs.

Trying to "do something" about the current slow, long-term warming in Earth-surface temperatures will not work against natural climate forces. When Americans realize what liberties have been lost in this unconstitutional power grab, we will deeply regret that we did not just prepare for natural climate change rather than trying to stop the unstoppable. Our focus should be on producing more energy to maintain economic growth, to raise worldwide living standards and, where necessary, deal with the actual effects of natural climate change whether warming or cooling. We should never limit growth in energy use with its associated improvements in human conditions and standards of living.

Critical differences in scientific approach exist between scientists who observe weather and climate and those who attempt to model nature's complexities in computers. Those who observe the natural, economic, and sociological aspects of climate change are "realists". Too many modelers, on the other hand, have become office-bound "tinkerers" who believe complex mathematics and parameter tweaking can accurately forecast long-term changes in climate—Earth's most complex natural system. Many of the tinkerers also have let ideological emotions and advocacy cloud their scientific objectivity.

Observations of natural variations in atmospheric and oceanic temperatures, gas concentrations, and currents only provide clear indications of how, but not when, climate will change. Historical and geological records illustrate the high levels of uncertainty in any forecast of either the direction or the timing of future climate trends. Climate forecasts based on computer models have proven to be unsuccessful due to the great number and great complexity of critical variables, some of which, like the effects of water vapor and clouds, so far defy mathematical definition. Little wonder that climate models fail, both in replication of past conditions and in forecasting the future.

Computer models of global climate just do not work. For example, the models' unanimous predictions do not match actual measurements of temperatures in the troposphere (lower 0-18 miles of the atmosphere, depending on latitude). According to the models, the troposphere should have warmed significantly in response to rising levels of atmospheric carbon dioxide. On the contrary, the troposphere has remained little changed during the last 50 years during which satellite and balloon-borne measurements of temperature and continuous direct

measurement of carbon dioxide levels became available. Models cannot truly deal with the realities of weather, that is, evaporation, convection, clouds, rain, wind variations, ocean heat storage and currents, and all the other pathways in which nature inexorably moves heat from warm regions to cold.

So, what should we do now about climate change, if anything? We must prepare to adapt to inevitable change, however unpredictable it may seem. We can recognize that production and use of our own domestic oil, gas, coal, and nuclear resources buys us time to meet these challenges and, at the same time, preserve our liberty. We can develop far better surface and space observational techniques and use them consistently over decades to better understand the science of our Earth. On political time scales, we can quit taking actions with unknown unintended consequences. We can choose sustained research and development of energy alternatives, those with clear paths to commercialization, rather than continue tax dollar subsidies and loan guarantees for premature or flawed introduction of politically motivated concepts. We can provide investment and business environments that will mature new sources of energy, particularly through reduction of personal and business income tax rates.

Instead, the President now proposes loan guarantees, rather than regulatory and legal reform, to add more nuclear power to the 20% currently meeting electrical power demand in the United States. His proposal for the Government to guarantee \$8.33 billion in loans, allegedly to encourage a single power company (Southern) to build two nuclear fission plants, reflects cynical manipulation of the facts. First of all, such a proposal and targeted loan guarantees in general are unconstitutional, violating the equal pro-

tection rights of other Americans provided by the 5th and 14th Amendments. Secondly, the proposal can always be withdrawn and does not include an elimination of those unnecessary regulations, judicial reviews, and barriers to nuclear waste disposal or reprocessing that make raising private capital for nuclear plants essentially impossible. Thirdly, the President hopes that his proposal, whether or not ever consummated, will garner support for similar loan guarantees to otherwise uneconomic wind, solar energy, and biofuel plants and for passage of unworkable and scientifically invalid climate change legislation. Fourth, the proposal would give the Government, once again, effective financial control of another segment of the American economy while distorting competition, capital markets, and good business practice. Finally, Government loan guarantees ultimately constitute a liability held by the American taxpayer. Don't we have enough of such liabilities already?

In addition to regulatory and legal reform to encourage private investment in nuclear power, the Government should help research institutions and industry develop nuclear waste reprocessing and/or reuse technology, terminated under the Carter Administration. Also, such cooperative research and technology development efforts should advance the capability to transform unusable portions of nuclear waste into stable or short-lived radioisotopes, using advance fusion processes. This type of Government support at least would be constitutional.

Instead of being ideologically greedy and ignoring good science and economics, we can start being wise and truly concerned about our children and their children and the society in which they will live. That concern needs to be manifested in the 2012 election of Congressmen and women and a President

with common sense and a strong perception of reality relative to the needs of America.

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11. LOAN GUARANTEES AND THE CONSTITUTION

Harrison H. Schmitt
February 28, 2010

For Immediate Release

Former Senator Schmitt Questions Constitutionality of Loan Guarantees as Part of National Energy Policy

The President and the Congress obviously are hooked on interfering in the American economy. Loan guarantees and their extreme manifestation, financial bailouts, show the extremes of this addiction. Now, the President proposes to use the authority provided by Congress to guarantee loans, rather than regulatory and tort reform, to a single power company (Southern) to build of two nuclear fission plants.

A return to nuclear power plant construction and operation constitutes the foundation of long-term energy independence for the United States – no question about it! The President's proposal, however, calls for the Government to guarantee \$8.33 billion in loans, allegedly to encourage adding more nuclear capacity to that currently meeting 20% of the nation's electrical power demand. A cynical disingenuousness underlies this proposal. The disincentives for private capital to fund these plants actually comes from a long-standing governing political philosophy, also supported by the President, that does not want nuclear power or the energy independence and economic growth it would support.

This nuclear loan guarantee proposal follows similar unconstitutional actions to prevent bankruptcy at General Motors and Chrysler as well as giving direct federal dol-

lar bailouts of large financial institutions. Increasingly, post-mortem analysis of these interventions that interrupted established bankruptcy proceedings indicate that they have prolonged and intensified the effects of Congressional meddling in the housing markets rather than mitigating those effects. Plus, the root cause of the current unrelieved recession has not been removed, namely, the self-interest of politically corrupt elected and appointed officials.

Loan guarantees and financial bailouts by the Federal Government may or may not be constitutional, depending on their purpose and adherence to other limitations provided by the Founders. On the one hand, loan guarantees and bailouts targeted at specific individuals or corporations violate the equal protection rights of other Americans provided by the 5th and 14th Amendments. In this light, the proposed loan guarantees for Southern and those recently provided to General Motors and Chrysler stand as unconstitutional discrimination against all other corporations and businesses that, without such welfare, would enter bankruptcy. Alternatively, Article I loan guarantees and bailouts that "provide for the common Defence and general Welfare" potentially would be constitutional if they specifically implement the enumerated powers of Section 8 of that Article. For example, loan

guarantees than shored up the finances of troubled corporations with an essential defense capability or with an essential role in supporting interstate commerce, might pass constitutional scrutiny, depending on specific circumstances.

Anyone who thinks that Government cannot be trusted in matters of financial management should immediately have second thoughts about the President's nuclear plant loan guarantees. The Government always will insist on provisions, that is, covenants that would allow the guarantee to be withdrawn. Further, little likelihood exists that this President would work to eliminate those unnecessary regulations, judicial reviews, and barriers to nuclear waste disposal or reprocessing that has made raising private capital essentially impossible in the nuclear industry and would continue as a barrier even to the completion of plants with federal guarantees.

Also, the President clearly hopes that this "proposal," whether ever consummated or not, will entice support from nuclear power advocates for similar loan guarantees to uneconomic wind, ethanol, and solar energy plants and for passage of economically unworkable and scientifically unsupportable climate change legislation. Instead, the national focus should be on producing more energy to raise worldwide living standards and not on limiting energy use and accompanying improvements in the human condition.

The nuclear loan guarantee proposal also would constitute another step toward national socialism, an ultimate goal of total government control of the private sector that appears to drive the current Administration and Congressional Leadership. If expanded to other units of energy production, it would give the Government, as in the case of much

of the auto industry, an effective financial hammerlock on of another segment of the American economy by distorting competition, capital markets, and good business practice. All one has to see to understand this insidious cancer inside the private marketplace is to look at the cost of capital advantage enjoyed by General Motors and Chrysler and the recent heavy-handed media and regulatory pressure brought by the Government on its automobile competitor, Toyota.

Finally, Government loan guarantees and bailouts both ultimately constitute additional liabilities to be held by the American taxpayer. Don't we have enough of such liabilities already?

If not federal loan guarantees to invigorate nuclear plant construction and operation in the United States, where do we go from here? The long-term impediment to expansion and continuation of nuclear power comes from the Government not meeting its legal obligation to store waste from commercial nuclear plants. The current Administration has totally abrogated any pretense to living up to this responsibility by walking away from further development of the Yucca Mountain waste repository. In actual fact, underground storage of spent fuel rods wastes money and potential energy and other resources. Well-protected, above-ground storage in unpopulated areas would be both safe and preferable until reprocessing of the rods becomes national policy. Naval reactor fuel rods already are reprocessed. Strangely, France, with over 85% of its electrical power produced by nuclear plants, as well as Japan and Russia, reprocess their spent fuel rods.

Therefore, in addition to the regulatory and tort reform necessary for private investment in nuclear power, the Government

should help research institutions and industry reactivate the development of cost effective nuclear waste reprocessing technology terminated under the Carter Administration, but still required by law. Also, such cooperative research and technology development efforts should advance the capability to transform the 3% remaining, unusable waste into stable or short-lived radioisotopes using advance fusion processes that produce intense proton fluxes. This type of Government support at least would be constitutional under the mandate to provide for national security.

The solution to how to move rapidly to increase installed nuclear power relates directly to the nation's overall energy policy. National and global demand, once tax reductions stimulate real economic growth, will grow by a factor of eight or more by the middle of this century to meet both global population growth and standard of living aspirations. That factor of eight increase in demand includes a two-fold increase to account for growth in the world population and a four-fold increase to meet the major aspirations of four-fifths of the world's peoples. Even an eight-fold increase would not bring the rest of the world to the current average per capita energy use in the United States. That would take at least an eleven-fold increase, not counting the demands of new technologies and climate change mitigation.

We further must recognize that increased production and use of our own domestic oil, gas, coal, and nuclear resources buys us time to meet challenges to stable supplies of energy from foreign sources and to provide for our national security as well as preserve our liberty. We also can choose sustained research and development of potential energy alternatives, those with clear paths to commercialization, rather than continue tax dollar subsidies for the premature or economically flawed introduction of alternative energy concepts. We can provide investor and development friendly business environments for the maturation of new sources of energy, particularly through maintaining and increasing favorable tax treatments of capital expenditures and personal and corporate incomes.

Most fundamentally, in 2011, a new Congress can turn to common sense rather than the unconstitutional governmental intervention to solve problems and meet new challenges.

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12. WESTERN LANDS AND THE CONSTITUTION

Harrison H. Schmitt
March 3, 2010

For Immediate Release

Former Senator Schmitt Reviews Background of the Federal Government's Continued Western Land Grab

A review of the history of the Western lands of the United States stands in order. Why? The Obama Administration is moving toward removing another 14 areas and over 13 million acres of federally controlled land from potential economic and national security applications. All in the name of conservation, energy production and other job, income, and revenue creating lands and their resources would be withdrawn in order to strictly limit legitimate private, public, and State use.

Conservatives believe in all aspects of conservation, as the name implies. Conservatives want to protect individual liberty, our federal concept of government, as well as nature's wonders. Conservatives believe that the Founders' Declaration of Independence, Constitution of the United States, and Bill of Rights give Americans the best guidance conceivable in meeting conservation objectives. To conservatives, it stands as lasting tribute to the Founders' inspired intellect and dedication to liberty that the specifics of their guidance relates directly to issues of modern times, in spite of cultural and technological changes that could not have been anticipated 230 years ago. When adhered to specifically as intended, these scriptures have stood the test of time. Questions now arise in the Conservative mind as to whether the Federal Government at present intends

that the Founders' guidance should be followed in the future.

Specifically, with respect to the conservation of public lands in the West, conservatives inherently balance actions to achieve that broad aim against their fundamental beliefs. This balance requires consideration of the liberties of individual citizens, the economic wellbeing of local communities and States, requirements for the "common defence", and the advance of conservation technologies. Many conservatives might not recognize the term, but instinctively they practice the Art of "systems engineering"; that is, consideration of all variables that might bear on meeting a challenge as well as evaluation of the impacts of intended and possible unintended consequences. Modern liberal activists do not appear to have this highly rational instinct.

The early stage for land issues in the West was set by Thomas Jefferson's consummation of the Louisiana Purchase in 1803. In addition to beginning the territorial growth necessary to guarantee the security, strength, and economic vitality of a truly continental United States, the Purchase also began the separation of the economic interests of the West from those in the East. Subsequently, the Anglo-American Convention of 1818 set the western northern border with

Canada along the 49th parallel, with the final settlement of the Oregon Territory boundaries occurring under President Polk in 1846. Polk's 1848 Treaty of Guadalupe Hildalgo added large territories in the Southwest formerly ruled by Spain or Mexico, including all of what would become California, Nevada, and Utah; most of Arizona; and western New Mexico and Colorado. Western land augmentation largely was complete with the Gadsden Purchase of 1853, adding land in southern Arizona and New Mexico, and then President Lincoln's remarkably farsighted purchase of Alaska from Russia in 1867.

In various ways, State, county, municipal, and private holdings replaced some federal control of the lands of the West. The treaties that added former Mexican territories initially preserved the original property rights and maintained old municipal boundaries. The Pre-Exemption Act of 1841, followed by the Homestead Act of 1862 and the latter Act's expansions in 1909 and 1919, permitted individual Americans and immigrants to take ownership of 160 acres (ultimately raised to 640 acres) of U.S. territory. In 1862 and 1864, to partially finance the construction of the Transcontinental Railroad, the Pacific Railroad Acts granted the Union Pacific and Central Pacific Railroads alternating sections of land within 20 miles of every mile of track laid. Other railroads across federally controlled Western land later received similar grants. Also, in 1862, a legislative process began so that States received land, proceeds from which would fund "Land Grant Colleges." The "patenting" of mining claims on federally managed land under the General Mining Act of 1872 created additional private holdings. Finally, the progressive admission of the States into the Union included various agreements as to what would be federal and what would be State managed lands.

Had modern extreme conservation beliefs been in ascendancy during the 18th and 19th Centuries, there would have been no transfer of Western Lands into private or State hands. The negative consequences of such a different history to the wellbeing of Americans and the world would have been enormous. The mineral, energy, and agricultural resources necessary to fuel our economic growth would not have been available. That economic growth could not have supported the worldwide defense of liberty through two World Wars, a Cold War, and now a war against Islamic Terrorism. The need for that internally supported economic growth has not changed. In fact, the urgency for it has increased as foreign sources of energy and other resources become increasingly unreliable.

The Founders gave Congress significant power in dealing with federally controlled land. First of all, Article IV, Section 3, Clause 1 of the Constitution asserts, "New States may be admitted by the Congress into this Union..." from territories controlled by the Federal Government. Clause 2 follows and gives Congress the further "power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States..." Having these clear powers, however, does not permit otherwise unconstitutional overreaching by either the Congress or the Executive. In particular, with the Antiquities Act of 1906, Congress unconstitutionally gave dictatorial land withdrawal power to the President. Clearly, only Congress has this power of disposition as enumerated in Clause 2. Presidents, in turn, have further violated constitutional equal protection guarantees by using Executive Orders to create extremely large area "National Monuments" with the sole purpose of withdrawing Western land from resource exploration and development. These actions go

well beyond the clear intent of the Antiquities Act relative to size of withdrawals and their allowed purpose.

In addition to the limitations of powers in Article IV, “equal protection of the law” provided by the 5th and 14th Amendments constitutes the primary constitutional constraint on the Congress and the President in actions relative to federally controlled land and property. The Government violates constitutional equal protection most generally by restricting the land-related economic and recreational activities of residents of Western States when no comparable restrictions are possible in most Eastern States. Wilderness and Monument designation for various western lands, establishment of private land buffer zones for endangered species, and regulatory and federal lawsuit roadblocks in the name of conservation also trample equal protection, as well as 5th Amendment’s guarantee of due process in many cases.

Additionally, Federal Government continues to alienate much of the West through its abuse of the 1906 American Antiquities Act through vindictive Presidential designation of certain public lands as “National Monuments”. Increasingly, arbitrary Monument designations under the false umbrella of conservation negatively impacts local economic potential as well as adding to national dependence on foreign sources of energy and minerals. The Antiquities Act states its purpose and intent protection of “historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interests,” most especially “antiquities.” The Act also states that Monuments should be “the smallest area compatible with proper care and management of objects to be protected.” The purpose and intent of the Act clearly has been honored far more in the breach than in the word. Most Presidents

ignore these explicit constraints and the Congress cynically lets it happen.

The purpose and intent of the Antiquities Act has been used to avoid the normal, intentionally cumbersome process envisioned by the Founders for all major legislation. In this case, Congress avoids contentious debate on bills to create National Parks or Wilderness Areas. The purpose and intent of the Act itself have been violated from the beginning as President Theodore Roosevelt and at least 12 of his successors have used the arbitrary power given to them to withdraw large areas of western lands from broad public and economic use. Although some of the nearly 100 withdrawn areas have obvious antiquities and other scientific values, such as New Mexico’s Chaco Canyon National Monument (1906), or have little defined economic resource potential, such as the Grand Canyon National Monument (1906), others would need extensive study to confirm that their withdrawn esthetic value exceeds that of other pressing commercial, State, or national requirements. In the latter instance, obvious questions exist about President William J. Clinton’s designation of the Utah’s resource-rich Grand Staircase-Escalante National Monument (1.9 million acres) without legislative and public debate.

Congress made a few state specific amendments to the Antiquities Act in response to perceived Presidential abuse of power. This happened in 1950 after President Franklin D. Roosevelt’s designation of the Jackson Hole National Monument (later added to the Grand Teton National Park) and again in 1980 after President Jimmy Carter’s egregious and extremely controversial withdrawal of 56 million acres in Alaska. Otherwise, Congress has unconstitutionally acquiesced to Presidential acts of hubris and authoritarianism far in excess of

the Act's original intent to protect antiquities. Congress' first mistake, after not eliminating the Act's basic unconstitutionality under Article IV, was to not set a specific size limit on a monument that, if exceeded, Congress must approve.

The socialists currently in control of the Government, for the narrow political purpose of gaining more power over private and State initiatives, do not and cannot admit that both the States and the people have strong direct interests in conserving natural environments. Federal oversight is one thing— heavy-handed restrictions that ignore broad State and national wellbeing is quite another. The advance of technology to explore for and extract resources without significant environmental impact threatens these opponents of progress in their attempts to destroy the livelihoods of the citizens of the West.

The new Congress elected in 2010 must restore constitutionality to federal management of Western lands and to federal activities in general. In addition, cooperative public, industry, State, and Federal Government

assessment of the resource, recreational, and overall economic potential of federally controlled land areas would allow fair evaluation of the benefit-cost relationships related to any constitutionally proper, land management decisions. New technologies and techniques, including non-invasive geophysical, geochemical, and geological evaluation methods, when combined with minimally invasive and helicopter-enabled scientific drilling tests, would give all parties an objective foundation for evaluation of particular land management proposals.

The Great Western Land Grab will continue until elections change the perspective of Congress and the President on the value of a true federal system of government supported by liberty and human initiative.

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13. EDUCATION AND THE CONSTITUTION #1

Harrison H. Schmitt
March 18, 2010

For Immediate Release

Former U. S. Senator Schmitt Blames Economic and Social Failures on Government Managed Schools

The education system managed by State Governments and significantly controlled by federal money and regulation has failed. This fact is well known to every parent and every aware voter. After World War II, our “public education system” for elementary and secondary grade levels left the control of parents and fell under that of selfish special interests. Led by leaders of unions and social activists, those special interests largely ignore the desires of parents and the needs of children and the nation. This continually deteriorating situation now threatens the national security of the United States and the liberty and prosperity of its citizens.

Elementary and secondary education requires the full, dedicated attention of all Americans. Without an educated electorate, a democratic republic cannot continue free and focused on the best interests of individual citizens and their future. Without the intellectual tools and wisdom provided by broad and objective education, citizens cannot reach their full potential in life for themselves and their families. Nor can they support the legitimate economic requirements of the nation and undertake the successful and perpetual defense of liberty.

The Founders gave us clear guidance in the Constitution for handling the education

of the people by unequivocally limiting the power of the federal government in this essential activity. These limitations came in spite of the Founder’s deeply held and clearly expressed belief in education’s fundamental importance to a democratic Republic.

First of all, no mention of education exists in the Constitution among its explicit listing of the powers of Congress and the Executive. Then, by way of the 9th Amendment, the Founders left the natural right of educating their children with the people. That 9th Amendment states, unambiguously, “The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.” The “certain rights” referenced by this Amendment, clearly include those specified in the Bill of Rights. Those “others **retained** by the people” logically would embrace all naturally encompassing, or intensive, human rights of a free people. For example, the “unalienable rights of life, liberty, and the pursuit of happiness” identified by the Declaration of Independence clearly constitute such intensive rights. Other such rights include education as well as free association, travel, work, communication, thought, privacy, property, and defense of self and family, privacy, travel, communication, and thought. In other words, the 9th Amendment protects rights

that inherently belong to humans as a species.

Further, by virtue of the 10th Amendment, the governmental powers for providing education are among those “not delegated to the United States by the Constitution” and “are reserved to the States, respectively, or to the people.” Specifically, power over education is “**not delegated** to the United States,” directly or indirectly, by any other constitutional provisions.

Congress’ Article I power to “provide for the...general welfare” does not and should not permit federal legislation on just any social issue such as education. The full phrase, in fact, reads, “provide for the common Defence and general Welfare.” Subsequent Clauses clearly provide only specific powers to Congress related to common defense and general welfare, and no Clause gives Congress power to do anything outside those enumerated powers just because it appears politically or ideologically expedient. This Article I phrase also must be viewed in the context of the more inclusive phrase “**promote** the general welfare” found in the Preamble. There, that phrase sets out one of several basic reasons for the establishment of our form of government and hierarchically subordinates the Article I Congressional power to other constitutional limitations.

Finally, Clause 18 of Section 8, Article I, reinforces the clear directive from the Founders that Congress only has the legislative powers enumerated in Article I and no others. Clause 18 allows Congress only, “To make all Laws which shall be necessary and proper for carrying into execution **the foregoing Powers** and all other Powers **vested by this Constitution** in the Government of the United States, or any Department or Officer thereof.” The italicized phrases clearly limit rather than expand Congressional pow-

ers. Although this Clause gives Congress the authority to write and oversee regulations with the force of law, it can do so only as related to enumerated powers, none of which refer to education.

Some lawyers state that Article VI, Clause 2, the so-called Supremacy Clause, provides that federal law always trumps state law. Basically, this position maintains that the Congress, with the agreement of the President, can override any State law. The Founders would not have agreed. The relevant portion of the Clause actually reads, “**This Constitution**, and the Laws of the United States **which shall be made in Pursuance thereof**...shall be the supreme Law of the Land...”. The underlined phrases clearly indicate that only the Constitution and federal law made by virtue of Congress’ enumerated powers are supreme; however, those laws enacted by the States under their 10th Amendment powers lie beyond the reach of federal law so long as State laws honor other constitutional rights of the people.

Unfortunately, given their explicit constitutional mandate under the 10th Amendment, the States have almost totally failed in their responsibility for quality education of the nation’s electorate. Entrenched union interests, social activists, and school bureaucracies have usurped the people’s control of education. Legislatures in turn have strengthened the political power of everyone except those with the greatest interest in quality education; that is, parents, children, and taxpayers. Legislatures have become beholden for campaign contributions and election-day assistance to the National Education Association, the American Federation of Teachers, and many other educational special interests. In return, elected officials block implementation of reform measures like enhanced classroom discipline, merit

pay, curriculum reform, elimination of unnecessary administrative overhead, charter school initiatives, and parental choice using vouchers or tax credits. The net consequence of this narrow minded, selfish environment, plus the complacency of too many parents and other citizens, becomes ever-greater State funding for education's adverse special interests and ever-poorer results for children.

How serious has the problem become? Several generations of voters have graduated or dropped out with no usable background in history, particularly American history. Far too many voters cannot adequately read or write. Similar deficiencies exist in the electorate's working knowledge of simple math and personal economics. A large proportion of voters cannot comprehend how government actions will affect their families' liberty and financial future. Further, most voters and future voters have little knowledge-based perspective about the role that science and technology plays and will play in their personal lives. The Founders would be mortified at this state of affairs!

The recent attempt by the National Governor's Association to formulate educational standards constitutes a potentially important and clearly constitutional innovation. We can hope that implementation of the standards recognizes that individual States have flexibility to deal with local skill needs. Unfortunately, this agreement does nothing to eliminate the expensive, politicized, and increasingly dysfunctional State educational systems.

In addition to embracing quality standards and dealing positively with their implementation, the Governor's Association must prevent any unconstitutional move by the Congress and the President to nationalize their standards. Congress' and the Bush Administration's "No Child Left Behind Act

of 2002" stands as a classic example of unconstitutional national legislation and, still worse, uses loss of funding to coerce States to follow federal mandates. Rather than recognizing this Act's unconstitutionality by repealing it, President Obama now proposes to revise and extend the Act's mandates while reinforcing its coercive provisions. Americans should note that authoritarian government control of youth education, along with healthcare, exists as a major tenet of national socialism, and the time has come to back away from that insidious cliff!

So, what would be a start in bringing education to the level required for individuals and the country? If we lived in a perfect nation, teachers of our children would belong to the best-paid profession, bar none. No more critical professional undertaking exists in the United States than that of pre-college instruction and mentoring. Today, the highest paid teachers entrusted with this hugely important responsibility receive an average compensation of only about \$30 per hour before taxes. Considering that the future of the United States, as well as the future of the child, depends on how well teachers perform, the best teachers should receive on the order of \$180 per hour, or at least as much as the average lawyer receives. For the very best teachers, pay scales should reach at least those of the highest paid attorneys. We must ask ourselves which professionals, teachers or lawyers, have the greatest responsibility to the future of the United States and liberty?

Even at the terrible pay scales of today, and with no significant pay or job retention incentives based on merit, dedicated and highly competent teachers work twelve-hour days and six-day weeks for nine to ten straight months each year, if not more. They believe in what they are doing in spite of overly bureaucratic and often incompetent

administrations and politically correct classroom restrictions. Nonetheless, in general, the best and the brightest young Americans now find no financial attraction or personal satisfaction in a public school teaching career. Having to endure discouraging politics, stifling regulations, student disobedience, parental indifference, and actual physical danger overwhelms their desire to work with children and cannot compete with the lure of other professions.

“Hope for the best” never can be a strategy for achieving security and preserving and enhancing liberty through quality education. Rather, education of our children re-

quires a revolution in planning, action, and desire by vast numbers of parents and other committed Americans. That revolution must begin with the 2010 elections of new State legislators who will put our children’s future before politics and of a Congress that will stop unconstitutional governmental meddling with that future.

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14. EDUCATION AND THE CONSTITUTION #2

Harrison H. Schmitt
March 20, 2010

For Immediate Release (See Release No. 13 of March 18, 2010)

Former U. S. Senator Schmitt Sees Instruction in Basic Virtues Missing from Public Education

The Nation's Founders believed that educational instruction in the basic "virtues" instilled by their Judeo-Christian heritage formed an essential foundation of the American Republic. The thousands of years of trial and error development of that heritage and human struggles to preserve it represented to them an irrefutable basis for insuring the success of both the American Experiment and its citizens' lives, liberties, and pursuit of happiness. Today, only a minority of our State and national elected officials any longer shares this belief.

Immediately following the Revolution, several of the Founder's personal formulations of the required structure of locally managed education systems make it clear they felt strongly that the virtue, morals, and benevolence of a broadly educated electorate constituted the keystone for maintaining a representative democracy. The absence of such a commitment within the government-run education systems of today flies in the face of this wisdom from the ages.

The Founders truly believed in a Supreme Being, that is, they believed in God. Whatever belief system one might have, proper interpretation of the Declaration of Independence, the Constitution, the Bill of Rights, and the Federalist Papers requires a clear understanding of this fact. Their God,

they thought, had provided humankind, both believers and non-believers, with a blueprint for living happy and well. They truly believed in humankind's inherent and "unalienable Rights to Life, Liberty, and the pursuit of Happiness" and that those rights came directly from a higher power than themselves. How else could they then pledge "our Lives, our Fortunes, and our sacred Honor" to the cause of Independence when the price of failure was hanging?

To a man and woman, the Founders accepted their God's blueprint for society as including an fundamental human desire for freedom from the oppression of government as well as the liberty to pursue happiness according to individual initiatives so long as others maintained the same right. A broad adherence to Judeo-Christian virtues and justice would maintain the essential balance between individual freedoms and the partially contradictory need to work productively in a society of other free individuals.

The formerly pervasive, but non-religious guidance from the Founder's belief system, however, has disappeared from government-run educational institutions. Blame for this selfish, dangerous, and untenable state of affairs rests squarely and heavily on the shoulders of the modern Democratic Party and its political allies, the National Edu-

cation Association (NEA), American Federation of Teachers (AFT), and so-called “social activists” that support that party’s political agenda. Together, the Democrats and the unions fight all forms of parent and child focused educational reform in favor of government-mandated controls. On the other hand, when Republicans have had the opportunity, they have done nothing to effectively counter the objectives of those who would sacrifice our children’s future merely for an increase in political power.

Powerful ideological forces work to tear down the Founders’ guiding educational principles. Together, the modern Democratic Party and Unions fight to keep parental choice, home schooling, and charter schools from improving the future lives of all students; they have resisted paying and retaining teachers on the basis of merit; they have forced college education majors to gain “certification” rather than expertise in subjects they will teach; they have insisted on eliminating instruction in much of basic human knowledge and wisdom; they have degraded the learning environment through political correctness; they have eliminated necessary discipline from the classroom; they have sacrificed educational achievement for mediocrity; and they have driven the time for actual learning to abysmal levels in the majority of public schools.

The Unions and the Democrats’ political leadership hurt inner city schools the most - schools in the greatest need for meaningful local improvement. Inner city parents particularly desire parental choice in selecting their children’s schools and curricula. However implemented, such choice provides the foundation for innovation and customized learning that can fully tap the inherent ability for children to learn far more than they are challenged to do in most public schools today. Insult adds to injury when some Pres-

idents and other well-heeled politicians send their children to private schools while unconstitutionally requiring less financially secure children to attend government schools. Where can one find a constitutional “equal protection of the laws” in this situation?

The one major positive and constitutional intrusion by the Federal Government into educational policy came in the 1950s with enforcement of the Fourteenth Amendment as requiring racial integration of public schools. Unfortunately, subsequent unconstitutional limits on parental choice for their children’s education undercut this right to integrated public schools. Limits on choice have been particularly catastrophic in the inner cities. Currently, most State courts have been unwilling to reject union-driven, local and State limitations on choice, whether related to vouchers, charter schools, or home schooling. The Congress, and recent new proposals by the President, would continue to use unconstitutional legislation to further limit parental choice through federal educational mandates and funding coercion. The most blatant example of this political mindset has come with the elimination of parental choice in the school system of Washington, DC.

Although with important but limited exceptions, State and Federal courts continue to interpret the First Amendment as prohibiting broad use of educational voucher funding that includes church-sponsored schools. This interpretation contradicts the Founder’s clear First Amendment intent to only prohibit and **mandate of a federally** imposed religion. Note the specific language of the First Amendment in this regard: “Congress shall make no law respecting an **establishment** of religion...” (emphasis added). Could this be any clearer?

Additionally, the First Amendment specifically refers to a limitation on “Congress” and not on the States. The individual rights specified within the First Amendment, that is, free exercise of religion and freedoms of speech, assembly, and petition, correctly have been extended by the combined effects of the Fifth and Fourteenth Amendments to protect citizens from misuse of State power. On the other hand, the “establishment” and “press” clauses of the First Amendment refer to political institutions and not to individual rights and remain, as stated, a limit only on Congress’ power to establish a national religion or restrict freedom of the press. Therefore, if, under the Tenth Amendment’s reservation of non-federal powers to the States, a State wishes to provide for broad parental choice in education, Congress or the Federal Courts should have no say in the matter and State courts should not corrupt the First Amendment’s intent by striking down laws permitting such choice.

Most Americans recognize the critical role of education in our Republic, the importance of “virtue” in society, and the dire situation existing overall in education today. Isolated but critically important examples exist throughout the country of parents taking control of their children’s education. Millions of families pay to send their children to private and parochial schools, or home school them, while also having to pay taxes to support a failed public system. Home schooling and charter schools each now serve over 1.5 million children. Nearly half a million children are on charter school waiting lists.

In Harlem, New York, parents imposed charter schools on a large portion of their

public education system several decades ago. In Milwaukee, Wisconsin, parents succeeded in building a voucher system for their most disadvantaged students. In Cleveland, Ohio, they succeeded in getting the State legislature to provide a significant educational voucher program also for disadvantaged students, including those enrolled in religious schools. All these efforts took place against the firm and continued opposition of union leadership and most media commentary.

The Supreme Court has held correctly that the Milwaukee and Cleveland programs are constitutional. Meanwhile, Florida continues to fight unions, activists, and State Courts over implementation of voucher and tax credit programs for children most in need. Unfortunately, Congress has killed the hugely successful and popular voucher program in the District of Columbia. The fight goes on!

All must work to correct education’s failures, not with more money, but with more commitment to using common sense and the Constitution to get it right— and to elect those at local, State, and Federal levels who will get government out of the way and allow Americans to properly educate their children.

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15. EDUCATION AND THE CONSTITUTION #3

Harrison H. Schmitt
March 29, 2010

For Immediate Release (See Releases [13](#) & [14](#) of March 18 and 20, 2010)

Former Senator Schmitt Challenges Parents and Other Citizens to Take Control of Education

The nation's public education system fails to meet the needs of a representative democracy. Americans who recognize this fact must work to recover the nation's future before it is irrevocably lost. More tax dollars will not accomplish this recovery. Heaven knows we have tried that approach for half a century with nothing but regression to show for it. Recovery will come only with more individual and collective grassroots commitment to using common sense to truly reform how and what children are taught.

First and foremost, the Constitution's 9th and 10th Amendments' delegations of rights and powers, and the absence of "education" as an enumerated power of Congress in Article I, puts responsibility and obligation for education squarely on the people and the States. In this light, parents and guardians must be their children's continuing teacher, motivator, and advocate for learning, even after formal schooling begins. At the point their children start schooling outside the home, parents can no longer become just hopeful observers rather than providers. The family environment must stress the importance of education no matter the level of schooling of the parents. The child's future always will be in jeopardy without parental involvement and encouragement at the beginning and end of each school day, on

weekends, and during vacations. The parent almost certainly will benefit as much as the child through such personal commitment and interaction.

Parents also must fight for a massive reduction in administrative overhead and for a reallocation of existing State resources so that teachers' salaries and professionalism can be raised to levels commensurate with their critical role in preserving the American Republic. Against the dogma of the unions, they must help teachers fight for pay and retention based on merit. They must fight for choice in where children go to school and forcefully advocate objective instruction in basic knowledge, virtue, morals, and good behavior. In this context, parents and businesses should organize privately funded initiatives to fill the gaps currently existing in the government school system. These initiatives can support vouchers, charter schools, field trips, instructional materials, day-to-day classroom needs, and the like.

Parents should not allow the education of the many to be sacrificed to the need to discipline or attend to the few. They should insist that schools deal with special needs as, indeed, "special" needs, whether or not a consequence of a particular ability, disability, or attitude. Parents should work together to elect school boards that will require

teachers' colleges and continuing education to emphasize knowledge rather than methods. They should get involved in the selection of teaching media, that is, textbooks, films, and other materials, so that such materials inform about subject matter rather than indoctrinate students in a particular political point-of-view.

Elementary and secondary schooling prepares the child to assume the responsibilities and opportunities of adulthood, contributing to the economic foundations of the Republic. Some high school graduates will use their education to immediately enter the civilian jobs or the armed forces, whereas others will continue their formal education in institutions of higher learning. Most importantly, all graduates will be members of the nation's electorate, demanding a continuous, life-long dedication to the search for new knowledge, information, and background on current events.

The lack of informed perspectives about science and technology constitutes a particularly modern concern. It has formed an insidious social cancer that every day grows more dangerous to the health and well being of individuals and to American security and economic competitiveness. Along with the increasing educational gaps in math and

science within the electorate, the growing chasm between the supply and the demand for highly educated, homegrown science and engineering talent undermines the nation's ability to compete internationally and to provide for our national security. Our principle economic and security competitors in the world, particularly China, do not suffer from a similar problem.

To fully repair the elementary and secondary educational system, parents, guardians, and others concerned about the country's future, should work with like-minded teachers to take over the teachers' unions as well as change current attitudes in Washington about who controls education. In so doing, the future of education can be separated from government and returned to the people. Only then can teachers start to work fully on behalf of students and find such work to be far more professionally and financially rewarding than it is today.

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16. STATE OF THE UNION AND THE CONSTITUTION

Harrison H. Schmitt

April 2, 2010

For Immediate Release

Former Senator Schmitt Outlines America's Path to National Socialism

Americans lost two more large slices of their liberty with enactment of 2010 healthcare and financial legislation. Even given electorate's long and sad history of voluntarily, incrementally, and unconstitutionally giving up liberties to the Federal Government in exchange for personal security and insulation from personal responsibility, this loss breaks the heart: for the first time in America, liberty disappeared by political fiat and against the will of the people.

The previously faint but obvious path of the United States toward national socialism has suddenly become a super-highway. Reversing direction requires concerted, immediate action in the courts, push-back by the States, and passive resistance by the people. Using the term "national socialism" for where we are headed may make some uncomfortable, but it has historical precedent in referring to the logical end-point of current governing trends. A possible alternative term for where we are being taken would be "authoritarian capitalism," as now practiced in China, but that term does not yet have as good historical examples of the potential consequences of these trends as do analogies with the "national socialism" that swept Europe in the last Century.

Although national socialism clearly has atrocious legacies of genocide, aggression, and terrorism under the despotism of Hitler and the Third Reich, the term actually refers to a philosophy of authoritarian government that took hold in Germany early in the 20th Century. Once national socialists took control, the German government dominated individual liberties and the decision-making of private business and industry. Soon, that business and industry became an implementing arm of the domestic repression and the international ambitions of the Third Reich. Our concern today should be that "regulation" of individual liberties and "control" of the private sector now has become the often publicly stated goals of the current Congress and President in the United States.

The seeds for national socialism's destruction of liberty in Germany germinated in Bismarck's nationalization of healthcare in 1883-1889 and, of course, continued to a disastrous conclusion under Hitler. By 1920, the National Socialist German Workers' Party already advocated the following themes, now familiar as trends in the United States: creation of a managed economy with an extensive welfare state; anti-capitalism with profit-sharing between government and industry; nationalization of financial

institutions; central government control of education, press, and culture; government control of elections and the media; incitement of class and religious conflict; anti-Christianity and anti-Semitic policies; and personalization of leadership. Pervasive Statism of this nature stands only a short distance from the total Statism of Lenin and actually has little to distinguish it from the latter in terms of consequence.

The following political activities should reinforce concerns about other national socialistic trends in the United States, particularly over the last 30 years:

1. *Usurpation of Financial Markets:*

The Bush and Obama Administrations' and the Congress' violation of the Constitution through many targeted actions against financial institutions constitute a lack of equal protection of the law guaranteed by the 5th and 14th Amendments. These actions include selective usurpation of the normal process of bankruptcy; passage of selective laws restricting the private sector's legitimate decision-making; discriminatory decisions on which institutions would be allowed to fail; imposition of taxpayer bailouts (TARP) on institutions that did not want them; continued control of the financial and business decisions of remaining institutions; and favoritism in the subsidization of the housing finance disasters called Freddie Mac and Fannie Mae.

2. *Manipulation of Housing Markets:*

The Congress' and the Carter and Clinton Administrations' long term, unconstitutional (Article I and equal protection) manipulation of housing

markets and banking decisions. These non-market-based incentives planted the seeds for the sub-prime mortgage market meltdown as normal determinations of lending risk ceased for all but the most conservative, small banks.

3. *Control of the Private Sector:* The Obama Administration's and the Congress' unconstitutional (Article I and equal protection) usurpation of the normal process of bankruptcy for General Motors and Chrysler. Those companies have been transformed into federally controlled entities with both financial and regulatory advantages over competitors. In the process, senior debt holders had their property unconstitutionally taken in favor of a gift of ownership to organized labor. Although a year after the fact, the Supreme Court reversed this unconstitutional precedent that countered the 5th Amendment's prohibition against "deprivation of...property, without due process of law..." it did not reverse its actual effects. Expect this ploy to be tried again as has been the case with continued attempts to impose a moratorium on off-shore drilling for oil.

4. *Nationalization of Healthcare:* The Obama Administration's and the Congress' unconstitutional nationalization of healthcare and health insurance. Their plan includes, among many unconstitutional provisions, the forced purchase of insurance, violation of Americans' human rights to privacy, thought, and decision-making (9th Amendment) and the constitutionally protected independent powers of States (10th Amendment). Control of healthcare costs has disappeared as cost considerations have been removed completely

from most patients' decisions on what services to seek.

5. *Control of Life or Death Decisions:*

The Obama Administration's unconstitutional (equal protection and 9th Amendment) acceleration down the slippery slope of imposing government between doctors and patients in decisions on treatment and, indeed, on life or death. Authoritarian use of age to select who lives or dies far too closely resembles selection on the basis of race, ethnicity, or any other arbitrary criteria that became European national socialism's most insidious legacy.

6. *Control of Energy Production:*

The Obama Administration and the Congress' moves toward control of energy producing and energy consuming portions of the private sector. Selective loan guarantees related to domestic energy are unconstitutional on their face (lack of equal protection). Carbon emission controls have no valid justification constitutionally (Article I), scientifically, or economically.

7. *Regulatory Law-Making:*

The Congress' continued and accelerated, unconstitutional transfer (Article I, Section 8, Clause 18) of its specific constitutional law-making authority to the Executive's regulatory agencies.

8. *Increases in Debt and Taxes:*

The Obama Administration and the Congress' intentional destruction of the U.S. economy through massive increases in debt, tax, and regulation. This unconstitutional path (undermining national security and the general welfare) defies common sense relative to that of stimulating financial recovery by historically successful, permanent tax reductions.

Destructive policies currently in place or planned, undertaken in the name of "wealth redistribution," form the cornerstone of all varieties of socialism. Currently, they have resulted in continued high private sector unemployment, unrestrained growth of the federal government and its unions, government and union dominance over management, and a massive destruction of American wealth and incomes.

9. *State-Committed Media:*

The state-committed media's full-throated support of the current President's agenda to control personal behavior and private sector decision-making. In addition, the state-committed media supports proposals to silence or regulate alternative media sources and broadband communications as well as generally limit the 1st Amendment's freedom of political speech.

10. *Denigration of Judeo-Christian Values:*

The Congress' and the state-committed media's concerted effort to demonize and unconstitutionally discriminate (9th Amendment) against education and personal achievement, marriage, and other Judeo-Christian values.

11. *Control of Education:*

The Administration's declared intent to continue unconstitutional (10th Amendment) federal coercion of public education systems while unconstitutionally limiting parental choice (9th Amendment).

12. *Control of the Census:*

The assumption of control of the Census by the White House, with acquiescence by the Congress, in order to politically control the population count of various demographic groups and the subsequent allocation of Congress-

sional Districts. Under Article I, Section 2, Clause 3, this action violates the Constitutional responsibility of the Congress, "...in such Manner as they shall by Law direct," to oversee this critical function in a representative democracy.

- 13. *Cult of Personality*:** Early and continuing attempts by the Administration and the state-committed media to create a cult of personality and charismatic authority around the President and to characterize policy disagreements as personal and racial attacks.

The remaking of America is the stated goal of the President and the Congressional majority. If America is to avoid the disastrous consequences of sailing toward the unconstitutional shoals of national socialism, the election

of 2010 must be the point of tacking back into the political winds generated by the Congress and the President. This election must provide the majorities necessary to first, nullify the socialist legislation passed by the current Congress and second, to bring the Constitution back in control of America's government. Letting the current Congressional Leadership and this President continue to drive the ship-of-state no longer can be an option if we wish to preserve liberty and prosperity for our children and ourselves.

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17. HEALTH CARE AND THE CONSTITUTION #3

Harrison H. Schmitt
April 7, 2010

For Immediate Release (See related Releases Nos. 3, 9, and 16 of January 4, February 15, and April 2, 2010)

Former Senator Schmitt Advocates Specific Constitutional Challenges To Legislation Nationalizing Healthcare

The Constitution remains America's primary defense against the usurpation of liberty called "national healthcare reform." The States must accelerate their 10th Amendment defenses against the imposition of federal regulatory mandates in areas of governance not enumerated in Article I or elsewhere in the Constitution. At the same time, individuals, businesses, and associations must challenge the constitutionality of federal jurisdiction over healthcare as well as question specific provisions in the new law.

Specific legislative provisions now enacted in the Patient Protection and Affordable Care Act of 2010 and its companion Health Care and Education Reconciliation Act should be contested one by one. Hopefully, the Court's occasional commitment to judicial re-writing of the Constitution has not gone so far that these challenges will prove futile.

First and foremost, plaintiffs must remember that the Constitution of the United States cites no right to "health." Although an intensive, natural individual right to "life" clearly exists and finds its protection in the 9th Amendment, health results from individual circumstances and choices. Preservation of health lies with the people within the ac-

tivities *not* enumerated as functions of the Federal Government. Further, the 10th Amendment gives the people or States control of health policy given that the Constitution does not give that control to the Congress.

The 211th Congressional leadership and the President argue that constitutional power to "provide for the...general Welfare" found in Article I, Section 8, Clause 1, permits *any* form of federal legislation. The full Article I phrase, in fact, reads, "provide for the common Defence and general Welfare," and following Clauses limit the specific powers of the Congress in regard to the common defense and general welfare. None give Congress power to do anything it decides is politically or ideologically expedient. Of particular note in this regard are (1) the lack of any Section 8 enumeration of healthcare among other specifically stated areas for Congressional intervention relative to the general welfare and (2) the combined effect of the 5th and 14th Amendments that make unconstitutional the legislative imposition of reward or penalty on some and not on others, thereby depriving those others of "equal protection of the law."

Finally, some lawyers state that Article VI, Clause 2, the so-called Supremacy

Clause, provides that federal law always trumps state law. Basically, this position maintains that the Congress, with the agreement of the President, can override any State law. The Founders would not have agreed. The relevant portion of the Clause actually reads, “*This Constitution, and the Laws of the United States which shall be made in Pursuance thereof...*shall be the supreme Law of the Land...” The phrases with italics added clearly indicate that only the Constitution and federal law made by virtue of Congress’ enumerated powers are supreme; however, those laws enacted by the States under their 10th Amendment powers lie beyond the reach of federal law so long as State laws honor other constitutional rights of the people.

In addition to the unconstitutionality of mandating health reform by selective prohibition, regulation, taxes, and fines, specific provisions of current proposals add constitutional insult to injury. Some provisions of the new law, enumerated further below, violate several amendments to the Constitution, specifically, equal protection (5th and 14th), warrant-less searches of papers (4th), due process (5th), criminal prosecution rights (6th), and the right for private patients and physicians to associate freely (9th).

Insurance Mandates: Congress has no specific or general welfare power under Article I, Section 8, to mandate that all Americans use their incomes to purchase anything, much less health insurance, and to fine them if they do not. Nor can the power of Congress to regulate interstate commerce under Clause 3 provide constitutional justification for federally regulated insurance unless it requires States to allow insurance companies to commercially compete across state lines. Even then, regulation must be the restrained regulation of “commerce” and not include unconstitutional mandates on the insured or

the imposition of what insurance must be offered. To make matters worse, fining those who do not wish to purchase insurance deprive them of equal protection under the 5th and 14th Amendments. Further, such a mandate would confiscate private property (money) without just compensation as required under the 5th Amendment.

Criminalization of Non-Compliance: Criminalization of both an individual’s lack of health insurance and the purchase of health insurance above a government imposed limit violate the 6th Amendment without providing for the extensive and far-reaching protections required for “all criminal prosecutions.”

Prosecutions: The law now requires that private contracts between patient and insurer contain specific mandated coverage, violating the 4th Amendment right of the people “to be secure in their...papers...against unreasonable searches and seizures...”. Without a constitutionally valid warrant, the government has no power to access what is in a contract (paper or oral) between an American and his or her insurer.

Tax Increases: New sales taxes disguised as excise taxes will be imposed on a targeted few producers, sellers, individuals, and families to subsidize insurance for others and to cover the vast administrative costs of government healthcare bureaucracies. These taxes will be passed on to some consumers as *defacto* sales taxes, violating, both directly and indirectly, equal protection under the 5th and 14th Amendments. In addition, under neither Article I nor the 16th Amendment, no constitutional justification exists for an actual federal sales tax on visits to tanning salons. If allowed to stand, this specific sales tax could be used as a precedent for more such unconstitutional taxes. Further, the law applies an inverse sales tax if an individual

or a company does **not** buy health insurance for themselves or their employees, respectively. This inverse sales tax effectively constitutes a fine and runs afoul of the “due process” clause of the 5th Amendment, as the new law provides no administrative or judicial appeal process.

Free Association: The new law tramples the rights to privacy and free association protected by the 9th Amendment by inserting government review and control between a private patient and his or her doctor. The 9th Amendment states, “The enumeration in the Constitution, of certain rights, shall **not** be construed to deny or disparage others retained by the people.” The “certain rights” referenced by this Amendment, clearly include those specified in the Bill of Rights. Those “others retained by the people” logically would embrace all naturally encompassing, or intensive, human rights of a free people, for example, the “unalienable rights of life, liberty, and the pursuit of happiness,” identified by the Declaration of Independence. Other such intensive rights include free association, as well as privacy, education, travel, communication, and thought, in other words, rights that inherently belong to humans as a species. Activities like seeking healthcare clearly would not be included as they relate only to voluntary human activity in support of an intensive right to life.

Mandated State Benefit Exchanges: The new law requires States to create and regulate health benefit exchanges to oversee insurers’ allocation of benefits to subsidized patients. Absent State action, the federal government would set up and manage an exchange for the State. This coercive mandate on the States violates both the nature of the federal system of government envisioned by the Founders and the specific rights of the States and the people spelled out in the 10th Amendment. As James Madi-

son put it, “...it is to be remembered that the general government is not to be charged with the whole power of making and administering laws. Its jurisdiction is limited to certain enumerated objects.”

Insurance Companies as Utilities: Directly and indirectly, the law herds insurance companies into a stable of public utilities. In so doing, Congress not only illogically assumes that insurance constitutes a natural monopoly, like a local power company, but fails to provide for a market rate of return to the companies and their shareholders. Insurers would be limited by law to what could be spent on actual administrative costs. At the same time, the government would establish minimum standards of care over which the “insurance utility” would have no control as to costs, administrative or otherwise. In addition to the economic lunacy of this proposal, the unconstitutionality of this charade lies in the 5th Amendment’s right of shareholders to not have “private property be taken for public use without just compensation.”

Limitation on Drug and Device Costs: The new law directly and indirectly mandates limitations on the costs of medical drugs and devices. Without the ability to recover the costs of development, testing, and regulatory approval, drug and device companies will be unable to continue vigorous research and development efforts that potentially benefit everyone. Congress has no enumerated constitutional power to impose restrictions of this nature on selected private entities, either in Article I or under the equal protection mandate of the 5th and 14th Amendments.

Americans must stay forever on guard in the protection of both their liberty and specific Constitutional limitations on governmental power. The elections of 2010 can once again successfully demonstrate our du-

ty to the future and humankind by providing Congressional majorities sufficient to withhold funding for the new healthcare law. The election of 2012, with a change of Presidents and even larger conservative majorities in the Congress, then permits full repeal of this massive intrusion into American liberties.

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18. SPACE POLICY AND THE CONSTITUTION #2

Harrison H. Schmitt
April 15, 2010

For Immediate Release (See related Release No. 7 of February 1, 2010)

Former Senator Schmitt Takes Issue with the President on Space Policy

The President has repeated his advocacy for the abandonment of a program of deep space exploration by Americans in return for vague promises about future actions. His irrational and technically ridiculous proposals on national space policy, now largely adopted by the Congress, would put the nation into a steady decline in its human space flight endeavors toward the total absence of NASA Astronauts from space within a decade. With the demise of the International Space Station in about 2020, if not sooner, America's nationally sanctioned human spaceflight activities would end.

American leadership absent from space—is this the future we will leave to our children and the cause of liberty? I hope not. Once again, the President and his supporters in this fool's errand exposed their basic belief that America is not exceptional, that Americans should apologize for protecting liberty for 250 years, and that the human condition would be no worse off without our past expenditure of lives, time, and treasure in freedom's behalf.

Since 1957, national space policy, like naval policy in the centuries before, has set the geopolitical tone for the interactions between the United States and its international allies and adversaries. The President's FY2011 budget submission to Congress shifts that tone away from leadership by

America by abandoning human exploration and settlement of the Moon and Mars to China and, effectively, leaving the Space Station under the dominance of Russia for its remaining approximately 10-year life.

With the Station's continued existence inherently limited by aging, these proposals sign the death warrant for NASA-sponsored human space flight. Until the Space Station's inevitable shutdown, the President also proposes Americans ride into space at the forbearance of the Russians, so far, at a cost of more than \$60 million a seat. Do we really want to continue to go, hat in hand, to the Russians to access a Space Station American taxpayers have spent **\$150 billion** to build? What happens as the geopolitical and ideological interests of the United States and an increasingly authoritarian Russia continue to diverge?

In spite of funding neglect by the previous Administration and Congresses, a human space flight program comparable to Constellation remains the best way to develop the organizational framework, hardware, and generational skills necessary for Americans to continue to be leaders in the exploration and eventual settlement of deep space. Protecting liberty and ourselves will be at great risk and probably impossible in the long term if we now abandon deep space to any other nation or group of nations, particu-

larly a non-democratic, authoritarian regime like China. To others would accrue the benefits, psychological, political, economic, technical, and scientific, that accrued to the United States from Apollo's success 40 years ago. This lesson from John Kennedy and Dwight Eisenhower has not been lost on our ideological and economic competitors.

An American space policy that maintains deep space leadership, as well as providing major new scientific discoveries, requires returning to the Moon as soon as possible. Returning to the Moon prepares the way to go to and land on Mars, something we are a long way from knowing how to do. Returning to the Moon, importantly, trains new young Americans in how to work in and with the challenges of exploring and living in deep space. This also continues a policy in which freedom-loving peoples throughout the world can participate as active partners. Even more pragmatically, settlements on the Moon can send badly needed clean energy resources back to Earth for everyone's use and that are not under the control of some authoritarian regime.

In contrast to space activities that relate to national security, including the geopolitical standing of the United States among competing states and ideologies, there exists great potential for investor-driven commercial enterprises related to space. Commercial communications satellites remain the best example of the realization of this potential. Lunar helium-3 fusion power may someday reach and surpass this level of true commercialization. The key to such enterprises is that they are "investor-driven" even though their technology base may include earlier development activities by the United States government.

In contrast to this normal definition of space commercialization, the President and

NASA want to create a totally taxpayer subsidized rocket and spacecraft capability and call it "commercial", hoping that it would include acceptable and affordable means of taking astronauts to the Space Station. Do we really want to put all our national space access eggs in the one basket of unproven, fully subsidized launch capabilities with limited independent oversight? What happens if a risk adverse NASA and Congress eventually make those potential capabilities unaffordable and unattractive to non-NASA customers? The Board of any reputable investor-owned company must ask exactly this last question.

The Founders did not expect the Federal Government to fund activities beyond those applicable to specified powers of Congress and the President, such as those powers required for direct and indirect applications to our "common defence." This constitutional line between true commercialization and national defense is a very useful line to draw. Indeed, earlier federal aeronautical and satellite communications technology development drew this line carefully by funding technology development and not actual commercial products based on such technology. These technologies often have been critical to national security, but their application in commercial activities has been left largely to investor-driven decisions.

Advocacy of extra-constitutional "investments" (read "subsidies") by government in ventures aimed at commercial applications, even to meet a non-defense federal requirement, reflects a desire for more federal control of private enterprise rather than belief in the realities of the market place. Few, if any, past successes for this approach can be identified. Even those past federal "commercial" investments with constitutional justification, such as the Tran-

scontinental Railroad, ended up being very messy and corrupt.

NASA's chartered function, unfortunately not recognized by the current Administration, remains that of maintaining America as the international leader in all major aspects of space exploration and promoting space technology development, some of which may have commercial as well as defense applications. The private sector's function remains two fold: that of being dedicated contractors fulfilling NASA constitutional requirements and that of commercializing space technologies. NASA's function is *not* that of being a total substitute for investors whether or not it may be a future customer for those investors.

The right and continuing space policy choice for the Congress of the United States remains as previously approved by Demo-

crats and Republicans alike. Returning to the Moon compares in significance to President Jefferson's dispatch of Lewis and Clark into wilderness of the Louisiana Purchase. Jefferson's decision had unquestioned and critical significance to American growth and survival. As with the American West, human exploration of space embodies basic human instincts— freedom, curiosity, and betterment of one's conditions. America's unique and special society of immigrants still has such instincts at its core.

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19. IMMIGRATION AND THE CONSTITUTION #1

Harrison H. Schmitt

April 17, 2010 (updated 07/07/2010)

For Immediate Release

Former Senator Schmitt Joins in Alert About the Invasion Across America's Southern Border

The United States of America's nearly five-century foundation of liberty and prosperity includes remarkable benefits arising from the motivation and skills of immigrants. Most who have come to our shores sought new lives and carried with them the unique characteristics of both the desire to live and raise their children in "the land of the free" and the willingness to risk all to do this. The genetic and cultural amalgamation of these naturalized immigrants has reinforced that special character that uniquely distinguishes "Americans," that is, hard working, productive, inventive, generous, and quick to fight to protect freedom anywhere it is threatened, including from within.

America, however, has been under a steadily accelerating invasion since the 1970s. Predominately crossing our southern border, this invasion has been propelled by three dominate factors: (1) normal human desires by highly motivated Mexicans to improve their lives, (2) illegal drug demand in the United States, and (3) intolerance for human liberty by Islamic radicals.

Since 1850, many sectors of our economy have employed temporary or "guest" workers from Mexico. For over a century, these migrant workers simply attempted to both support their families in Mexico as well

as learn new skills. Indeed, the truck farms, mines, oil fields, and tourism industry of Mexico owe their successes to the training migrants received as guest workers in the United States. In general, individual Americans and the economies of Mexico and the United States benefited from the labor of migrant workers, particularly during World War II. Until the 1980s, fluctuations in America's demand for relatively unskilled labor more or less managed this migration so that permanent immigration stayed at a minimum. At the same time, however, strained relationships have existed between many Americans and Mexicans, as well as between the two nations, because of the disparities in overall economic wellbeing, differences in cultural heritage, and repeated historical conflict.

In the early 1980s, a number of Senators and Congressmen proposed, based on economic realities and the past benefits of migrant worker availability, that the concept of "guest workers" be formalized by federal management of the national migrant worker supply so that it matched the available jobs not sought by American workers. Also, these sponsors felt that a well-managed system gradually could overcome the problems between workers and employers. At no time did this legislative effort consider amnesty

for illegal aliens a helpful or constitutional option.

Unfortunately, by 1986, organized labor in the United States had persuaded the Congress and President Reagan to reject this managed approach and, instead, imposed a fully restrictive system, the Simpson-Mizzoli Act. With its formalization of the illegal status of migrants while in the United States and the placement of the onus of immigration law enforcement on employers, this change caused former and future migrants to stay north of the border rather than face the dangers and hardships of coming back each year for work. In addition, those who stayed here found ways to bring their extended families across the border, rather than maintaining direct ties to their hometowns and extended families in Mexico.

The disastrous result of restrictive federal policy, as well as the growth of available welfare and educational benefits, has been an increase from the steady, cross-border circulation of about 2 million migrants in the 1970s to 15-20 million illegal immigrants 30 years later. The amnesty provisions included in the 1986 Simpson-Mizzoli Act only increased the flow of illegal immigrants, giving hope of another future grant of amnesty.

Clause 4 in Article I, Section 8, of the Constitution makes amnesty of any specific group of non-citizens unconstitutional as it give Congress only the power "To establish an *uniform* Rule of Naturalization." A one time amnesty for illegal aliens hardly qualifies as a "uniform Rule" if other immigrants must follow a different process to become citizens. Amnesty for being in the United States illegally also created great resentment among naturalized Americans and legal residents following the normal course toward naturalization. Clearly, constitutional equal

protection of the law does not apply if federal amnesty targets a specific group.

The politically motivated lawsuit just filed by the Federal Government against the immigration enforcement law of the State of Arizona assumes that Article VI, Clause 2, the so-called Supremacy Clause of the Constitution, provides that federal law always trumps state law. Basically, this position maintains that the Congress, with the agreement of the President, can override any State law. The Founders would not have agreed. The relevant portion of Clause 2 actually reads, "*This Constitution*, and the Laws of the United States *which shall be made in Pursuance thereof*...shall be the supreme Law of the Land..." The underlined phrases clearly indicate that only the Constitution and federal law made by virtue of Congress' enumerated powers are supreme; however, those laws enacted by the States under their 10th Amendment powers lie beyond the reach of federal law so long as State laws honor other constitutional rights of the people.

Again, the only power relative to immigration granted to the Congress is "To establish an uniform Rule of Naturalization." Enactment of immigration law beyond this power must rest on Congress' power to either (1) "provide for the common defence," that is, to provide for border security or (2) make regular, that is, regulate the use legal migrant labor in interstate commerce. As border security is not being provided by the Federal Government nor is it intercepting illegal workers moving across State lines, a long list of precedents allow the States to enforce federal law. Those precedents include use of State law personnel to enforce speed limits on federally funded highways, drug laws, and crimes against financial institutions.

Current Congressional leadership and the President now appear intent on dealing with illegal immigration with national worker identification cards. Rather than handling worker immigration constitutionally, with full border control and a managed guest worker program, they will argue that Congress' power to "provide for the...general Welfare" found in Article I, Section 8, Clause 1, permits any form of federal legislation. The full Article I phrase, in fact, reads, "provide for the common Defence and general Welfare." Following Clauses in Section 8 are intended to limit the powers of the Congress to specific details related to these two primary functions, and none give Congress power to do anything politically or ideologically expedient for re-election. Of particular note in this regard is the lack of any Section 8 enumeration, directly or indirectly, of "immigration" or "national identification" among other stated areas that permit Congressional action. Again, Congress only is given the power "To establish an uniform Rule of Naturalization."

In spite of the lack of any clear constitutional power to do so, the Congress created the "e-Verify" program in 1997 as a federally coordinated system to assist employers in determining the legal status of new hires. Now under the management of the Department of Homeland Security in cooperation with the Social Security Administration, this program gradually has grown and become mandatory for federal contractors, although still voluntary for others. Political pressure has increased, however, to make e-Verify mandatory for all employers. In fact, the Federal Government has sued the State of Illinois to overturn a State law that prevents use of e-Verify in hiring.

As a national data bank exists to assist states in their efforts to control illegal immigration, an argument based on the regulation

of interstate commerce (Article I, Section 8, Clause 3) can be made for federal assistance to the States in this arena. Hiring of migratory workers clearly relates to commerce that encompasses many States and could be constitutionally regulated along that narrow line. A federal program that mandates use of e-Verify, however, unconstitutionally transfers immigration law enforcement responsibilities to the private sector and the States. Then the Justice Department sues Arizona, but not other states with similar laws, for enforcing federal immigration law. Where is the legal consistency in this Alice in Wonderland approach to providing for our common defense?

If, in addition to e-Verify, Congress attempts to impose national identification cards on all Americans, much less just on "workers," this would look very much like the identification papers that came with Germany's disastrous adoption of national socialism, adding to other trends in that direction now prevalent in the United States. Clearly, such cards, particularly if they contain personal information such as identifying DNA, runs afoul of the right to privacy guaranteed by the 9th Amendment. That Amendment states, "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." The "certain rights" referenced by this Amendment, clearly include those specified in the 1st through 8th Amendments. Those "others retained by the people" logically would embrace all naturally encompassing, or intensive, human rights of a free people, for example, the "unalienable rights of life, liberty, and the pursuit of happiness," specified in the Declaration of Independence. Other such intensive rights include privacy as well as free association, education, travel, communication, and thought, in other words, natural rights that inherently belong to humans as a species.

The requirements for national security, the often dysfunctional nature of government in Mexico, and the explosion of unfunded welfare liabilities, unfortunately, have made it necessary to take entirely new approaches to illegal immigration. Not surprisingly, the Constitution, directly or indirectly, includes everything necessary for Americans to address the realities of modern immigration.

- **First**, under Article I, Section 8, Clauses 15 and 16, both the Federal Government and the States, together or separately, have the power to seal and enforce their international borders against illegal entry and one or the other, or both together, should do so. Also, Article I, Section 10, Clause 3 specifically gives the States the power “...to engage in War” when “actually invaded or in such imminent Danger as will not admit delay.” Clearly, Arizona and other Border States are being “invaded” by both non-citizens who would rob their taxpayers and criminals who would conduct illegal drug and terrorism-related activities within their jurisdictions. As recent deaths and crimes show, delay in enforcement demonstrably constitutes “imminent danger” to all their citizens.
- **Second**, Border-States should petition for the consent of Congress under Article I, Section 10, Clause 3, to individually contract with Mexico for temporary workers as required for unfilled jobs in labor intensive industries within their respective borders. To avoid the scam Cuba perpetrated on the Carter Administration in 1980, these contracts should provide for joint vetting of workers relative to past criminal ac-

tivity and outstanding warrants. The 10th Amendment allows the States to work together to set up such a temporary worker program that serves their combined interests so long as Congress consents. In addition, under Article I, Section 8, Clause 3, the Federal Government has the power to “regulate Commerce” associated with the movement of temporary workers between States.

- **Third**, the States and the Federal Government should respectively legislate to stop the provision of State and federal privileges and benefits to non-citizens. Nothing in the Constitution requires that they receive equal protection of American laws. We also should revisit and reverse past legislative and Federal Court determinations that rights and privileges under the Constitution apply to anyone illegally within the jurisdiction of the United States or born within that jurisdiction under false pretenses. Those rights should only become available after naturalization based on a uniform, consistent procedure. On the other hand, under the 10th Amendment, State law could require various benefits be included in employment contracts between temporary workers and employers within State jurisdiction.
- **Fourth**, Congress should provide an efficient and uniform method of gaining legal residency, particularly for needed high-skilled workers, and restrict the issuance of green cards to the immediate, nuclear family of a legal resident.
- **Fifth**, the current system of using State-issued driver’s licenses, or a

comparable document for non-drivers, to identify American citizens should be continued. It is constitutional under the 10th Amendment, but the various States must accept the critical nature of this responsibility and issue such identification only to citizens and legal residents. The driver's license system's resistance to counterfeiting should be improved continuously through the application of federal technological research necessary to prevent and detect counterfeiting, applicable to Congress' Article I, Section 8, Clause 6, power "To provide for the Punishment of Counterfeiting the Securities...of the United States."

These five actions, taken in total, particularly will benefit many Americans of Hispanic heritage by reducing employment competition from illegal immigrants and by reducing involuntary discrimination in hir-

ing by employers now under federal regulatory intimidation.

There exists a *de facto* invasion of America by illegal immigrants and drug cartels from Mexico and parts of the southern hemisphere. The new Congress that convenes in 2011 and the new President taking office in 2013 must work to stop this invasion at the borders while resisting both amnesty for illegal immigrants and increased enforcement placed on the backs of individual Americans. Both approaches are unconstitutional and both encourage discrimination against American citizens of Hispanic heritage.

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20. SPACE POLICY AND THE CONSTITUTION #3

Harrison H. Schmitt
April 25, 2010

For Immediate Release (See Related Releases Nos. 7, 18 of January 8, and 13, 2010)

Former Senator Schmitt Details Concerns about the Administration's Proposed Space Policies

The President announced a “bold approach for space exploration and discovery,” to quote the 2010 White House statement. In considering his FY2012 budget proposals for NASA, Congress rightly should ask just how “bold” is this approach versus what America requires in the intense geopolitical environment of space. In addition, Congress should ask for specifics as to why this approach would be better than the Constellation Program previously approved by a Congress controlled by the President’s own Party, and whether it truly “advances America’s commitment to human spaceflight and exploration of the solar system” to again quote the White House. Congress also should question if the proposals support the primary constitutional rationale for funding NASA, that is, as a contribution to “the common Defence.”

The previous United States space policy, twice approved by the Congress in response to President George W. Bush’s FY2005 and subsequent budget requests, called for focused technology development and mission formulations that would (1) enable a return to the Moon not later than 2020; (2) be consistent with future Mars exploration; (3) complete the construction of the International Space Station; and (4) replace the Space Shuttle with a new crewed vehicle not later than 2014. The Constellation Program’s de-

sign could have achieved these goals subject to the projected run-out funding for NASA in that original FY2005 budget.

Unfortunately, the Bush White House submitted annual budgets for FY2006-10 that funded Constellation \$11 billion less than originally deemed necessary to maintain the proposed schedule. This includes the effects of an Office of Management and Budget error of about \$3.8 billion in 2004 budgeting for the run-out cost of the Space Shuttle. Congress exacerbated this continued under-funding for Constellation through inflation-related cuts of about \$1.5 billion in its 2006 and 2008 Continuing Resolutions.

In spite of these budgetary complications amounting to under-funding of some \$12.5 billion over six years, and contrary to the Augustine-Crawley Commission’s allegations, Constellation remained “executable” in 2009-2010, albeit with some delay relative to the original schedule. The Augustine-Crawley Commission did not look at the reality of the existing Constellation Program and its previously approved funding, but constrained itself to the cumulative cuts of \$28 billion for FY2010-20 submitted in the Obama budget for FY2010. Clearly, Constellation would not be “executable” with such drastic cuts to the original funding plan.

New funding of about \$4 billion per year for the next five years could restore and maintain Constellation and possibly remove dependency on Russia in 2015 for Space Station access (NASA's FY2011 budget of \$18.5 billion is less than 0.5 percent of total federal spending.). If this budgetary augmentation to current space policy were made, the United States could indefinitely maintain its dominant position as the world geopolitical and technical leader in space.

With the 2004-2010 period of intense design and development for Constellation already behind us, President Obama's budget proposals would substitute the following policy elements:

1. **A NASA budget increase of \$6 billion over five years.** These new dollars would be used largely to increase expenditures for space, Earth, and climate science. (This same \$6 billion increase, if dedicated to Constellation, would give the U.S. its own Orion spacecraft and Ares launch vehicle for access to Space Station.)
2. **A "commitment to decide in 2015" on a specific approach to a heavy-lift rocket.** Such a launch vehicle would be required if future policy added flights to "lunar orbit, Lagrange Points, Asteroids, moons of Mars, and Mars." (With no commitment to any specific objective for a new heavy-lift, this policy position is made to order to be abandoned. It contains the technically and philosophically ludicrous suggestions that Lagrange points could be fuel depots without getting fuel from the Moon, and that a one-shot mission to an asteroid has greater historical and

scientific value than a base on the Moon.)

3. **Technology development and test to increase space capabilities and reduce costs.** The objective would be to "establish the technological foundation for future crewed spacecraft for missions beyond Earth-orbit." (As with heavy-lift, the policy gives no focus for these technology efforts as valuable as they could be, particularly with the development of a domestically produced, large hydrocarbon fueled rocket engine like we had for Apollo. Claims of providing "more jobs for the country" are disingenuous, however, as many more thousands of jobs disappear with the cancellation of Constellation and the retirement of the Space Shuttle.)
4. **A "steady stream of precursor robotic exploration missions."** (A steady stream of such missions has been underway for two decades so this is nothing new.)
5. **Restructuring of Constellation with the Orion spacecraft downsized to an emergency escape vehicle for the Space Station.** (Orion development has progressed to the point that this proposal amounts to its termination and the start of a new spacecraft program that will cost more than completing Orion. Contrary to White House claims, this logically does nothing to reduce dependence on Russia to carry Americans to the Space Station. Major additional costs would be incurred to fly the new Orion uncrewed to the Station and replace it periodically.)

6. **An increase in “astronaut days in space by 3500 over 10 years.”** (No obvious means of doing this exist based on available Russian Soyuz flights to the Space Station and current biomedical limits on crew exposure to the space environment.)
7. **A “jumpstart” to non-NASA, “commercial space launch” capabilities for human space flight.** (With no known business case that would justify referring to such a capability as a “commercial” venture that private investors would support, and no definition of the final level of requirements and specifications NASA ultimately would demand, this fully subsidized initiative amounts to another, probably underfunded program by government. It is not clear how much funding will be requested for this subsidy, but a total of about \$4 billion of new money each year over ten years would have kept Constellation on track for a 2015 availability of Orion and a 2020 return to the Moon.)
8. **Placing the space program on a more ambitious trajectory.** (Clearly, the President’s proposals are not as ambitious as the Constellation return to the Moon and Mars exploration program. Rather, the President takes American human space flight out of the calculations of other nations.)

Although many inherent logical, technical, and implementation flaws in the Obama policy are evident, it is important to examine the consequences for the United States if the President’s promises could be kept in their entirety:

1. **The United States’ human space flight capability will rapidly atrophy and then disappear by about 2020.** With this atrophy would come the rapid disappearance of the psychological geopolitical edge from which we have benefited immensely since World War II and particularly since Neil Armstrong stepped on the Moon.
2. **China will control lunar resources for terrestrial energy and space flight as well as dominate the Settlement of the Moon and eventually Mars.** China repeatedly expresses interest in harvesting helium-3 fusion fuel present in the Moon’s surface materials. A lunar settlement, sustained by the by-products of helium-3 production, constitutes the most cost and politically effective means of gaining this critical future energy resource. If the Moon comes under China’s control, long-term geopolitical reality would be changed in the same way that the Middle East’s control of oil dominates our current national security vulnerabilities.
3. **Russia will control access to the International Space Station.** Prices per astronaut visit to the Station, including the astronauts of our non-Russian partners, will escalate from the \$63 million today to whatever the traffic will bear. After the Space Station must be abandoned due to aging, probably no later than 2025, any future station will be left to China and/or Russia to build, crew, and use.
4. **Europe, Japan, and other nations with limited space capabilities will cut deals with China, India and Russia for space access.** A clear loss of international interest in space

and other partnerships with the United States will result.

5. **Without a clear set of space objectives, NASA will be reduced to a Space Science Agency.** Past strong technical and professional synergism with national security will disappear.
6. **Subsidized human space flight development for national space projects will see cost escalation and schedule slips.** If this nebulous alternative to traditional NASA contracting received adequate funding, including needed reserves, then this potential problem might disappear; but, since Apollo, that is too much to expect in modern federal budgeting. Inevitable cost and schedule problems will follow inadequate initial funding, unanticipated or unknown technical issues, requirement and specification creep, and progressive NASA intrusion into design and implementation. As taxpayer dollars will fund this effort, cost increases will be driven by the unfortunate and overly risk-adverse nature of mainstream media reporting, and political reactions by the Congress, White House, and NASA bureaucracy.
7. **Inevitable shrinkage and loss of innovation of the aerospace and defense industrial base will occur.** Combined with the Administration's and Congress' under-funding of advanced research, development, and test for national security systems, the lack of funding and focus on specific space objectives will worsen this progressive weakening of our essential development and manufacturing foundations. Congress clearly has the constitutional power to increase or

decrease defense-related funding; however, it also has the constitutional obligation to provide for the "common Defence" relative to existing threats. Along with the President, Congress clearly is not addressing existing threats adequately.

8. **Engineering and science education and research will lose another major foundation.** The governmental and academic establishments continually underestimate the importance of national human space flight initiatives in stimulating academic education and research; but it is nonetheless still as real in the minds of young people today as it was after the launch of Sputnik in 1957.

In light of these obvious adverse consequences if all the President's promises are kept, and much worse if any are not, why would the President not just budget to properly restart, fund and manage Constellation? Compared to trillions of dollars of other spending he has asked for, this would have added a relative pittance. Would not President John Kennedy, or Presidents Jefferson, Polk, Lincoln, Eisenhower, Johnson, and Reagan, have moved forward in space rather than backward, given the global challenges we face?

The depth of the current Administration's antagonism toward the historical vision of America, as well as toward a preceding President, is unprecedented. The philosophical wedge driven between citizens and their government reaches deeper than any time since just before the Civil War. Our national future on Earth, as well as in the ocean of space, requires that this negative view of America, its people, and its future be overturned in upcoming elections.

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21. IMMIGRATION AND THE CONSTITUTION #2

Harrison H. Schmitt
May 1, 2010

For Immediate Release (See Release No. 19 of April 17, 2010)

Former Senator Schmitt Emphasizes Illegal Drugs and Terrorism as Components of the Border Invasion

Three dominate factors propel the invasion across the southwestern border of the United States: (1) normal human desires to live better, (2) the pull of illegal drug demand in the United States, and (3) Islamic radicals' hatred of the freedom of thought and action America represents.

The threat and reality of narco-terrorism spilling out of Mexico into the United States has raised the ante and continuing cost of protecting our southern border. Under the umbrella of illegal immigration, the actions of criminal enterprises increasingly penetrate the lives, law enforcement, and economies of Americans in Texas, New Mexico, Arizona, and California, as well as in interior American cities and towns. Border States directly experience the violent competition between drug gangs, including random killings by the drug cartels and their associates.

Mass murders of Mexicans just across the border have totaled over 800 people through April this year, up from 539 in the same period of 2009. In March, these murders included two U.S. citizens affiliated with the U.S. Consulate in Ciudad Juarez. Following a recent home invasion and robbery of an elderly couple, the March 2010 killing of rancher Robert Krentz in the same area of southeastern Arizona brings stark

reality to both the personal threat to Americans and the lack of adequate concern by the Congress and the Administration.

The controversial but broadly supported new law in Arizona aimed at reducing illegal immigration at the State level reflects the growing anger of a majority of American citizens. This anger about lax federal interdiction of clandestine border incursions exists largely independently of political party affiliation. The people of Arizona and other Border States live with the physical and economic cost of illegal immigrants every hour of every day. They feel exposed to the consequences of self-defeating immigration law and continued federal dithering on this and other matters of national security. Self-serving appeals by outsiders and the President to ethnic and racial emotions only inflame the situation and solve nothing.

Supporting the scope of the new Arizona law, and similar understandable and appropriate efforts in many other States, is the fact that all Americans must prove their identity in specialized travel, financial, and law enforcement situations in order to protect the public at large. One aspect of American life where definitive personal identification generally is not required, but should be, is voting. This may explain the extreme reactions to the new Arizona law from those whose

elections depend on vote fraud to maintain political power.

The Federal Government's constitutional responsibility remains the protection of the nation's borders and its citizens from both the current border invasion and the pervasive national wave of violence that has accompanied it. Article I, Section 8, Clause 15, of the Constitution gives the Congress the power "To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel *Invasions*" (emphasis added). In the absence of the Congress exercising this power, the Militia remains under the control of the individual States. The States most affected along the southwestern border, with the cooperation of other affected States, therefore should jointly mobilize and deploy their Militias, i.e., National Guard forces.

Further, as Clause 16 of Article I, Section 8, reserves "to the States respectively, the Appointment of Officers, and the Authority of training the Militias..." States participating in a joint border force have constitutional authority to appoint a qualified Commanding Officer and subordinates to plan, coordinate, and manage counter-insurgency operations in the Southwest. Operational leaders for this effort exist in the many highly competent individuals recently retired from active duty in command of Army or Marine small unit operations in comparable geographic conditions in the Middle East.

Under Article I, Section 8, Clauses 15 and 16, then, both the Federal Government and the States, together or separately, have the power to seal and enforce their international borders against illegal entry and drug trafficking. One or the other or both together should do this without further delay. In conjunction with boarder enforcement, a major

educational, medical, and legislative effort should be made to reduce Americans' demand for illegal drugs that stimulates and funds the activities of drug traffickers. People of good will should join in considering all options available to fight the unintended crime consequences of drug prohibition. Did the failure of alcohol prohibition in the 1920s, and the unintended consequence of stimulating organized crime, teach us nothing?

Simultaneously, contingency plans also should be developed for the possibility of a full collapse of the Mexican government. Should such a collapse occur, the immigration pressure from refugees at our border would exponentially increase. The escalating violence in border cities, and kidnappings, murders, and revenge killings in that country's interior, already signals a broad collapse of social order in Mexico. With respect to suppressing and eliminating the drug cartels, little can be expected from a government that, at least in this arena, appears to be compromised and dysfunctional.

Nonetheless, we must work with the Mexico to assist in the enhancement of the security and normal economic wellbeing of its citizens, in addition to establishing defensive preparedness along our common border and sea routes. The situation could begin to resemble that in Afghanistan if we are not very proactive, with the warlords of the drug cartels joining forces with Islamic terrorists and regional dictators to establish themselves as a direct and broad-based security threat to Americans and the American economy.

A comparable problem of economic and governance disparities between the Mexican and the young United States faced President James Polk and the Congress in the 1840s. In that case, a Mexican army invaded Texas

and war ensued. War provided no permanent solution to the problem, consequences of which have been suppressed for a century and a half by the value of Mexico's natural resources and migrant labor. It has been left to present generations to again face the effects of the same disparities, intensified by narco-terrorism. These continuing dangers have been exacerbated by a self-defeating U.S. policy toward migrant workers that emphasizes prosecution of Americans for hiring rather than the management of requirements for migrant labor.

The inability of the United States to stem illegal immigration from Mexico also provides cover for the entry of Islamic radicals wishing to pursue their war of terror against Americans. Combined with the *de facto* invasion of immigrants, and the real invasion of the drug cartels and gangs, we effectively have an open border for our terrorist enemies. Although the present Administration and the President do not admit that a state of war exists between the United States and Islamic radicals, Americans exposed to airplane bombers, shootings of military personnel on home soil, and kidnappings abroad know reality when they see it. The

Border States now find themselves in the front lines of this war.

The deteriorating border situation calls into question the current Congress' and President's willingness to deal with actual invaders, much less provide more broadly for the Nation's constitutionally required "common defence." They see plans for unconstitutional "amnesty" for illegal aliens, and irrational ethnic and racial antagonism, as a means to counter the voter backlash now sweeping the United States because of legislative, regulatory, and prosecutorial attacks on liberty, personal wellbeing, and the future of America's children. The new Congress in 2011 and the new President in 2013 must work to counter this growing threat to "life, liberty and the pursuit of happiness" in America.

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22. FOREIGN POLICY AND THE CONSTITUTION #1

Harrison H. Schmitt
May 7, 2010

For Immediate Release (See Related Release No. 4 of January 8, 2010)

Former Senator Schmitt Faults President's Strange View of America's Foreign Policy Interests

America's self-interested relations with other nations make up a fundamental component of providing for the "common Defence," as required under the Preamble to the Constitution of the United States. The Founders recognized this fact in many provisions of the Constitution, both in the powers granted to Congress and in the role of the President as Commander in Chief and initiator of treaties. The President has the constitutional responsibility to set and carry out foreign policy, balanced by the power of Congress in providing funds necessary for implementation. Congress' power includes appropriating funds for the armed forces as well as the Senate's responsibility to "advise and consent" on treaties negotiated by the Executive and major personnel appointments made by him.

Success in America's relations with other nations must be measured only in terms of the elimination or sufficient reduction of foreign threats to the security, prosperity, and liberty of its people. With the exception of policies related to Canada and Mexico with whom we share common borders, America's historical foreign policies were largely determined by the fact that the country lies between two great oceans. Geographically, we are a maritime nation with military and commercial dominance on the

seas being fundamental to national security and prosperity, respectively.

In the last Century, the advancement of technology extended the requirements inherent to a maritime nation to include military and commercial dominance of the air and, in the last 50 years, of space. Nonetheless, the basic national security principles related to being a maritime nation have not changed. Two of those principles remain the requirements for the projection of military and economic power and the creation of beneficial alliances away from our shores and borders. The success of coordinated foreign and defense policies can be measured by the extent to which those wishing us harm do not violate our borders and shores.

Traditionally, of course, American foreign policy focused on relations with nation states. Today a new enemy, less geographically defined but equally or more threatening, has appeared and, to defeat, requires coordinated, imaginative, and complementary foreign, defense, and prosecutorial policies. Beginning in the 1970s, national leadership failed to fully recognize and act on the fact that, after about 300 years, radical Islam once again had declared war on Western Civilization, and now particularly on America.

The signs of a new era of conflict were clear: early hijackings of planes and ships, the 1972 murder of Olympic athletes; the fall of the Shah of Iran and the subsequent hostage taking at the U.S. Embassy in 1980; the suicide attacks on the Beirut Marine barracks in 1983; the 1986 Berlin disco bombing followed by suicide attacks on U.S. Embassies in Kenya and Tanzania in 1998 and the USS Cole in 2000; and many other incidents throughout the world. Even the original attack on the New York World Trade Center in 1993 did not arouse America from its deep sleep of denial. Such murderous incidents by Islamic radicals should have alerted all previous Administrations that the conduct of U.S. foreign policy had to change and intelligence gathering and its application required new emphasis and coordination.

Finally, we began to fight the war being waged against us after a suicide bombing using hijacked aircraft destroyed the World Trade Center and a portion of the Pentagon. Only heroic self-sacrifice by passengers appears to have prevented a similar destruction of the Nation's Capitol. This concentrated sneak attack on Americans in America briefly awoke the government, the national media, and most Americans to radical Islam's unrelenting hatred of us and all non-Islamic societies.

In response to the 9/11 attacks, President George W. Bush and the Congress took the military fight to the Islamic terrorists wherever they could be found, particularly in Afghanistan and Iraq. Part of this new awakening became the creation of alliances with other threatened democratic nations. Before long, however, the will to protect themselves and civilization against radical Islam began to waver within the alliance, within the national media, and then within the leadership of America's Democratic Party. In spite of

this retreat by its supposed leaders, however, the vast majority of Americans remember what is at stake.

Trends in the fight against Islamic radicals remain discouraging although American sacrifices have created a fledgling democratic Iraq that has significantly reduced that country as a potential haven for international terrorists and a possible source of weapons of mass destruction. Also, actions initiated by President Bush in Afghanistan and northern Pakistan have forced terrorist organizations like Al Qaeda and the Taliban to fight for survival in the region's mountains. Developments in Iran, however, present even more serious threats than did Iraq and Afghanistan and should get more serious attention that they receive from the current Administration and President Obama.

Although nominally a nation state, Iran has become the primary source of support for Islamic terrorists in the Middle East as well as developing anti-Western alliances of its own with China, North Korea, Venezuela, and anti-democratic insurgent forces throughout the world. Iran's aggressive pursuit of nuclear weapons and missiles to carry them threatens not only the existence of Israel but of the major population centers of the world.

President Obama has made it clear that he is not worried about the long-term consequences of the war being waged by radical Islam. He has ordered the Department of Defense to de-emphasized long-range missile defenses necessary to counter future attacks on the U.S. from Iran. Such anti-missile defense policies also increase the level of policy intimidation by China, Russia, or other nuclear-armed entities directed at North America and allies in Europe and Asia.

These and other unilateral retreats in foreign and defense policies fly in the face of long-term U.S. interests. For example, after World War II, the United States pursued a bipartisan policy of deterring attack with weapons of mass destruction by making it clear that such an attack would result in massive nuclear retaliation against the attacker. Now, even in light of the efforts by rogue states like Iran and North Korea to develop nuclear weapons and their means of delivery and of nuclear modernization activities by China and Russia, the President's budgets and Congressional appropriations do not provide for the maintenance and modernization of this nuclear deterrence. In fact, the President recently has announced that nuclear retaliation by the United States has been taken off the table during his Administration for attacks using other types of weapons of mass destruction. Illogically, if the attacker were in compliance with the Nuclear Non-Proliferation Treaty, the President would not retaliate for a non-nuclear, mass destruction attack, or a crippling cyber-attack, or a mass conventional attack beyond the ability of the U.S. to counter! We clearly are now less safe than we were just one President ago.

Our vulnerabilities also would be increased in the nuclear arena by Senate ratification of the nuclear arms reduction treaty just negotiated with Russia. In the absence of China, India, Pakistan, France, the United Kingdom, and Israel, this treaty makes no sense even if we could expect all countries to comply with negotiated agreements of this type. Such Pollyanna efforts to put the

nuclear genie back in its bottle fly in the face of the horrible record of compliance by our adversaries with past arms reduction treaties. There exists no evidence that these treaty efforts have served long-term American security interests. On the other hand, the absence of global war between nations for the last 65 years shows that nuclear deterrence, indeed, has served American security interests. The potential of attack or intimidation by other, more modernized and less democratic nuclear powers remains a reality and must continue to be countered visibly and convincingly.

America cannot long endure conscious neglect of foreign and defense policies that weaken it relative to the many threats visible in the present and predictable in the future. Its first chance to begin to stem this decline will be with the new Congress in 2011 and an unrelenting insistence for it to act in America's interests and not just its own. In the meantime, the greatest pressure possible to put America's interests first should be imposed on the current Congress and the national media. A new President and constitutionally inclined Commander in Chief then must take office in 2013.

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23. COMMON DEFENSE AND THE CONSTITUTION #2

Harrison H. Schmitt
May 13, 2010

For Immediate Release (See Related Releases Nos. 4 and 5 of January 8, and 13, 2010)

Former Senator Schmitt Faults President's View of America

President Obama, from all available evidence, does not grasp the very special nature of America. Maybe he missed that part of growing up as an American. Maybe he really believes that the Constitution impedes “change” rather than existing as a bulwark against tyranny and a blueprint for the governance of a free people.

Maybe the President's near-term compassion has overwhelmed his common sense and his Oath to “preserve, protect and defend the Constitution of the United States.” Maybe neither his teachings as a child nor his schools in Indonesia, nor his elite education in Hawaii, nor his readings as an adult included an objective view of the history of America's beginnings, maturation, and indispensable role over two and a half centuries as the protector of human liberty.

Maybe the President does not understand or comprehend the motivations of Americans in wars spanning 233 years when they fought and died and worked and produced on behalf of freedom, sustained by the idea of America. Maybe, just maybe, the President really believes he and his party should force Americans to give up their uniqueness and be like almost everyone else in the world; that is, an elitist-led, socialistically confined people with few, if any, real liberties to enhance their lives and those of their children. Maybe the President also does not

see any value in providing clear, continuing, and global protection against those who would take our liberties from us by stealth or force.

This Administration has demonstrated in its economic, defense, and foreign policies and actions that it wants America to forego its dominant position in world affairs and in the protection of liberty. It views America and Americans as unexceptional and the Constitution is considered just a piece of paper without the power to constrain political and ideological ambition. This antipathy toward the America of history and the Constitution of our Founders may come from the President's own upbringing and education away from their influences during critical formative years. Further, most of his senior formal and informal advisors have ties to anti-American radicalism. The President and these advisors may well love America, but it is love for a radically changed America and not love for the traditional America of individual liberty and personal responsibility.

America also has fallen victim to a non-public Presidential edict to cancel or significantly modify all possible policies rooted in American exceptionalism. Further antipathy exists toward most policies instituted by the Bush Administration. No longer will the government speak or act on the war on terror or encourage democracy nor provide critical

missile defenses, nuclear deterrence, economic growth, spending restraint, tax cuts, choice in education and healthcare, or, indeed, dominance in the new ocean of space. All evidence indicates, from bailouts to healthcare to immigration to missile defense, that the White House policy rule is “if most Americans are for something, this Administration will be against it.”

A general philosophical and psychological uniqueness characterizes the vast majority of Americans, originating from the circumstances of their ancestors or their immigration to these shores. No matter what ethnic or racial roots individual citizens may have, immigration rapidly brought the lover of freedom, the risk-taker, the ambitious, the learned, the innovator, or the survivor of tyranny to America. For over 450 years, millions of men and women voluntarily left familiar lands and lives for the promise of liberty and a new start; or involuntarily found that promise through the personal sacrifice as former slaves or indentured servants. Men and women of all ethnic backgrounds, with cultural heritages in Europe, Africa, Latin America, and Asia, have come together as Americans to improve their lives and to help those in former homelands resist tyranny and survive hardship. No other peoples in history have contributed to others, and done so routinely and voluntarily, what Americans have contributed with their lives and treasure. We indeed are special, not perfect, but certainly not “arrogant” as the President often alleges or implies.

News out of Washington today could be explained if our long-term protagonists had succeeded in having a sympathetic ideologue elected to the Presidency and his allied majority elected to the Congress. The moves to dismantle the economic, educational, and defense foundations of the United States of America by the President and his party indi-

cates strongly that the hypothetical but nonetheless nefarious intent of such a plant may be closer to realization than many imagine. His persistent, daily, direct and indirect attacks on individual liberty also can be explained in this context, whether these enemies of America exist as terrorists, bullies like China and Russia, any one of several petty totalitarian regimes, or foreign and domestic purveyors of a self-serving anti-American ideology. Further, the new President has laid the groundwork, in unbelievably huge and dangerously costly debt, and extreme “stimulus,” budget, tax, and regulatory packages, for exactly what would eliminate the ability of the United States Government to carry out its constitutionally mandated role to “provide for the common Defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity.”

Americans face the fact that the President now presides over foreign, intelligence, and national defense policies that work against the preservation of American liberty. Who could have imagined the following foreign policy dichotomy? The President explicitly encourages dictators and would be dictators in Iran, North Korea, China, Russia, Venezuela, Honduras, Ecuador, Syria, Lebanon, and throughout the United Nations. Then, at the same time the President insults old and new allies such the United Kingdom, Honduras, Poland, Czech Republic, Israel, Georgia, Columbia, Iraq, and Afghanistan. The encouragement of new democracies and freedom fighters against tyranny is off the diplomatic table while legal immigration status is given to members of terrorist organizations like Hamas. This feckless approach to dealings with both enemies and allies lacks a nationalistic as well as a realistic assessment of all immediate and long-term threats to our security. The situation is so outlandish that one must

assume that the President and his advisors know exactly what they are doing.

The President gives financial aid and moral equivalence to terrorists attacking Israel and other democratic nations. He gives constitutional protections to foreign terrorists caught red-handed in attacks on Americans while at the same time prosecuting Americans who served their country as ordered in time of war. He works to release captured enemy combatants and terrorists to again attack U.S. citizens and soldiers or to live among us. As if this were not enough, the President then unconstitutionally jeopardizes our “common Defence” at home and abroad with massive reductions in the military budgets necessary to counter conventional and non-conventional capabilities in the hands of China and Russia and their surrogates. His tacit acquiescence to the development or acquisition of weapons of mass destruction by Islamic extremists and various rogue nations endangers Americans at home and abroad, particularly those in our armed forces. Now we have the spectacle of telling these enemies of liberty that we will not build necessary defenses or retaliate in kind if weapons of mass destruction are used against us. Much of the deterrence that would be provided by our willingness to use such weapons in self-defense has disappeared under this President.

The courage and dedication of the American service man and woman remains, as it always has, the most positive and lasting protector of our liberty and, indeed, the liberty of others. Today, the all volunteer Army, Navy, Air Force, Marines, Coast Guard, and National Guard and Reserves constitute the most capable and feared fighting force in the world as well as the most humanitarian. Maintaining, expanding and anticipating the needed capabilities, adequate size, and motivation of that force always should be “job

one” for the President and the Congress in providing for the “common Defence.” We owe these men and women and their families our deepest appreciation, continued regard and support, and far more significant rewards than they currently receive for their service and sacrifice.

How will we find our way out of the looming national security wilderness into which the President has taken us? The first basic step is clear: the supporters of liberty must take control of enough seats in the Congress in 2010 to stop further erosion of the nation’s security and economic foundations and then recover rapidly from there. To do this, liberty’s defenders must formulate a new Contract with America and this time never turn back from that Contract as happened after 1998. The New Contract should include the following commitments: reinforce the basic tenets and intent of the Constitution relative to national security and federal domestic policy; recreate our educational system as a parentally controlled system focused on students rather than unions; revitalize our free enterprise economy on the proven basis of free markets and personal enterprise; rebuild, enhance, and maintain a strong and flexible military; reconstitute a comprehensive and effective foreign and domestic intelligence structure; move vigorously to contain or remove centers of anti-democratic evil in the world; and re-forge alliances with traditional allies and newly democratic nations.

A New Contract with America does not constitute an easily achieved set of commitments, but clearly, they must be met, and met soon. Unless the supporters of liberty regroup and move forward successfully, the ideologue in the White House, his party, and his media acolytes will seek to make our task impossible. And, without our wholehearted commitment to liberty, they may

succeed. With the understanding and pledge that we can always improve on history, we should take pride in what our ancestors and we have accomplished for American families, and indeed, for the world. In the face of new attacks on freedom and property, preserving and enhancing liberty stands as a cause worthy of a new generation of Founders.

Harrison H. Schmitt is a former United States Senator from New Mexico as well as a geologist and former Apollo Astronaut. He currently is an aerospace and private enterprise consultant and a member of the new Committee of Correspondence.

24. SUPREMACY CLAUSE OF THE CONSTITUTION

Harrison H. Schmitt
May 21, 2010

For Immediate Release

Past Releases neglected to deal with the "Supremacy Clause" of Article VI of the Constitution.
This Release corrects that oversight.

Former Senator Schmitt Discusses the Limit to Federal Constitutional Supremacy Over State Law

States' Attorneys General and Governors
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challenging the Federal Government's constitutional power to legislate, regulate, or order executive action on healthcare, education, or other issues of clear 10th Amendment State responsibility should not concede constitutional ground on the basis of the Constitution's Supremacy Clause (Article VI, Clause 2). This Clause does not mean or imply that "federal law trumps state law when there is a direct conflict between laws" as stated by Virginia's Attorney General Kenneth Cuccinelli in an otherwise excellent Wall Street Journal Opinion Editorial (The Constitution Sets Real Limits, *WSJ* April 19, 2010).

The relevant portions of Clause 2 read: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof...shall be the supreme Law of the Land..." As the underlined phrases clearly indicate, the Founders only intended that federal legal supremacy apply relative to enumerated powers, particularly those given to Congress in Article I. Those specifically enumerated powers do not include healthcare or education to name just

two of many areas of current federal constitutional overreach. If the Founders intention for the Supremacy Clause had been otherwise, the 10th Amendment would have been rendered meaningless, leaving the States and the people subject to any Congressional legislative whim or Executive Order.

Relative to powers reserved to the States by the 10th Amendment, State laws stand supreme so long as they adhere to the rights of the people specified by other Amendments, particularly the far-reaching 9th. Specifically related to healthcare, on the other hand, under the Article 1, Section 8, Commerce Clause, Congress could and should require that States permit the "commerce" of health insurance to be conducted across state lines as a major means for competition to lower insurance costs.

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25. EDUCATION AND THE CONSTITUTION #4

Harrison H. Schmitt
May 28, 2010

For Immediate Release (See related Releases [13](#), [14](#), and [15](#) of March 18, 20, and 29, 2010)

Former Senator Schmitt Finds Lack of Private Funding of Research the Fault of Congress and Academia

World War II changed the face of learning for those Americans who choose to enter college or university. The life and death necessities of the War period and the subsequent Cold War challenge of the Soviet Union brought unprecedented levels of defense-related federal funds into private and State-run institutions of higher learning and research. In addition to necessary federal requirements on how these dollars could and should be spent, there came increasing regulatory controls on institutional management largely unrelated to defense needs. The federal reach extends to employment, environment, internet services, institutional financial activity, financial aid and student data, campus security, and equity in athletics to name only a few areas now under the federal thumb.

Since World War II, the private sector's interest in supporting students and research at colleges and universities has been discouraged by the increasingly anti-free enterprise biases of faculty and administrators. The real incentives for private funding of advanced education remain strong, however, primarily in the development of future, high quality employees and potential exclusivity to research results that give a competitive advantage in the supporter's field of interest. Unfortunately for students and the country, the attitude that "industry money is dirty

money" infects most faculty and administrators in spite of the obvious long-term benefits to students and the nation. Government agencies, colleges, and universities continue to drive away this major potential source for revitalization of advanced education rather than working with the private sector to develop a mutually acceptable and beneficial framework for private funding.

To make matters worse, President Lyndon Johnson's Great Society's Higher Education Act of 1965 instituted federal student loan guarantees and grants (Pell Grants), bringing even greater federal regulation of how universities and colleges run their institutions. This Act stands as unconstitutional on its face under the enumerated restrictions of Article I, Section 8, and even more specifically under Clause 18 of Section 8. Clause 18, the "Necessary and Proper" Clause, specifically limits Congress' law-making to powers vested in the Constitution. No enumerated power to deal with education can be found in Section 8 or anywhere else in the Constitution.

The Higher Education Act of 1965 further violates equal protection provisions of the 5th and 14th Amendments by limiting those who qualify for educational assistance. The Act also ignores the Constitution's clear delegation of education powers to the States

via the 10th Amendment that reads: “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.”

The Obama Administration has made this disastrous situation even worse. The Secretary of Education, Arne Duncan, and Congress now exert national socialist control over students and their institutions by having eliminated the efficiencies and taxpayer default protection the private financial sector previously provided in the making, processing, and monitoring of student loans. The Administration also proposes to make Pell Grants a perpetual entitlement that will add hundreds of billions of dollars to our nation’s unsustainable debt.

The previously mentioned 5th and 14th Amendments’ provision of equal protection of the law inherently makes unconstitutional any government discriminatory takeover of societal functions that can be accomplished by sound business practices. Student loans, health insurance, and home mortgages illustrate current cases in point. Such takeovers also violate the people’s natural, intensive rights under the 9th Amendment by the government assuming power over individual decision-making on the education of individuals. History further shows that the total cost in taxes to pay for government inefficiencies and subsidies, as well as loan defaults, will be far greater than reasonable profits and employment gained within the private financial sector.

Clearly, a public interest exists in targeted federal funding of education and research in State and private institutions in times of national security threats. Even the Government’s necessary reaction to the educational demands of the Cold War, particularly after the 1957 orbiting of Sputnik I by

the then Soviet Union, exacerbated the loss of the States’ and private control over research institutions. Unfortunately, there has been willing compliance by recipient institutions with an increasing loss of educational liberty. Targeted national security funding, standing alone, can be constitutionally justified under the joint legislative and executive powers for national defense enumerated in Articles I and II. The reservation of educational powers to the States and the people by the Tenth Amendment, however, logically requires that, in contracting for research, the federal government cannot constitutionally regulate the management of the recipient institutions beyond the audits and record keeping required for overseeing the successful, fraud-free, outcome of the funded research. Any regulation or coercion outside these bounds clearly is unconstitutional. No national security claim can be made over the way an institution runs its normal educational business just because tax dollars fund students or research at that institution.

Factors other than constitutional overreach also corrode higher education, and the growing gap between the supply and the demand for highly educated talent clearly undermines the nation’s ability to compete internationally in development of commercial and national security technologies. For instance, the sad quality of pre-college education in math and science has steadily reduced undergraduate student interest in engineering studies. If a student never developed the skills in math or physics necessary to enjoy or even succeed at engineering, why beat one’s head against that wall of educational deficiency?

Reduced undergraduate interest in engineering studies, even among those with the proper skills, also follows as a critical consequence of higher education’s long dependency on federal research funds to fund

graduate education. For example, the uncertainty in Government's continued commitment to major federal engineering projects and the steady decline in commitments to development of advanced technology for space, defense, and energy systems has not been lost on students who otherwise might have entered science or engineering fields. Students are fully aware of many major program cancellations and layoffs of engineers since the politically motivated demise of Apollo in the early 1970s and the premature and continuing cuts in advanced defense projects in the late 1980s and again under the current Congress and Administration.

The cryptic crisis in the broad education of the electorate, as well as in science and

technology education of the most talented Americans, has caused a multi-decade erosion in the objective perceptions of voters and in the supply of young engineers available to serve in critical industrial, space and defense projects. The Congress has no choice but to begin to rapidly repair the damage done by their predecessors.

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26. GULF OIL SPILL AND GOVERNMENT

Harrison H. Schmitt
May 31, 2010

For Immediate Release

Former Senator and Astronaut Schmitt Sees No Analogy Between the Gulf Oil Spill Crisis and Apollo 13

President Obama's Administration and its supportive media repeatedly use our 1970 Apollo 13 experience as analogous to the effort to contain and cap the Deepwater Horizon oil spill in the Gulf of Mexico. Mr. Tony Hayward, CEO of British Petroleum, also has used the analogy of the 1970 Apollo 13 experience relative to the effort to contain and cap the Deepwater Horizon oil spill in the Gulf of Mexico (WSJ, op ed, 6-4-10). Not hardly!

The rescue of Astronauts Jim Lovell, Fred Haise, and Jack Swigert after an oxygen tank explosion on their spacecraft illustrates how complex technical accidents **should** be handled in contrast to the Gulf fiasco. Nothing in the government's response to the blowout explosion on the Deepwater Horizon and its aftermath bears any resemblance to the response to the Apollo 13 situation by the NASA of Apollo and its Mission Control team at the Manned Spacecraft Center in Houston. More recently, Chile and its corporate and governmental partners demonstrated, again, how such events should be managed and implemented.

"Failure was not an option" for Gene Kranz and his Apollo 13 flight controllers and engineers. In contrast, failure clearly has been an option for President Obama and those claiming to have been on top of this

situation "from day one" in his White House and in the Departments of Interior, Homeland Security, and Energy. With no single, competent, courageous, and knowledgeable leader in charge of a comparably competent, courageous, and knowledgeable team as we had with Apollo 13, the Administration has been doomed to failure from the start. The President, without any experience in real-world management of anything, much less a crisis, has no idea how to deal with a situation as technically complex as the Gulf oil spill.

Whatever may be the culpability of British Petroleum and its federal regulators in the accident, it has been left to BP engineers and managers and to Gulf State officials to respond as best they can in a regulatory environment that is politically charged, incompetent, fearful, and hesitant. Absolutely no reason exists to assume that any part of the Federal Government has engineering expertise comparable to the petroleum industry that can be applied to this or any future energy-related crisis. Certainly, White House Chief of Staff Rahm Emanuel, Interior Secretary Ken Salazar, Homeland Security Secretary Janet Napolitano, and Energy Secretary Steven Chu have no more experience in these matters than does the President. Salazar's empty threat to "push BP out of the way" has no basis as a realistic option

and best illustrates the floundering of the Obama Administration. Indeed, from “day one,” the expertise of the entire U.S. and British drilling and production industry, with a single experienced engineering manager in charge, should have been mobilized to combat this spill. It still is not too late to start doing it right.

A more appropriate analogy from the Apollo era would be the recovery from the tragic fire during a pre-launch test on January 27, 1967, that took the lives of astronauts Gus Grissom, Ed White, and Roger Chaffee. The Apollo 204 fire occurred in the clearly recognized crisis atmosphere of the Cold War in which America raced to demonstrate to the world the superiority of freedom over the communist oppression of the Soviet Union. The Deepwater Horizon explosion took place in the equally apparent crisis of America’s dependence on sources of oil from foreign nations governed or intimidated by our enemies or economic competitors. There, however, the validity of the 204 fire analogy ceases.

The NASA’s response to the 204 fire was to rapidly implement its previously well-formulated, objective investigation of its causes, both technical and managerial. Managerial responsibilities were identified and George Low and his engineering team made appropriate changes without a prolonged exercise in finger pointing or the delays of another Presidential, buck-passing “commission.” Although NASA’s future accidents, such as the Space Shuttles Challenger and Columbia, were handled more politically, but NASA of Apollo moved forward and even accelerated the that effort to its successful conclusion. Apollo 8’s Frank Borman, Jim Lovell, and Bill Anders orbited the Moon less than two years after the 204 fire. Seven months after that, on July 20, 1969, Apollo 11’s Neil Armstrong and Edwin Al-

drin, with Mike Collins in orbit overhead, landed on the Moon. The lessons from the 204 fire were applied and we moved on.

In contrast to NASA’s 1970 approach, President Obama’s and his Administration’s otherwise rambling response to the Deepwater Horizon explosion has been to stop off shore oil exploration by the United States. Further, rather than allowing BP to stay focused only on solving the problems of the spill, Attorney General Holder now has launched a civil and criminal investigation! And, let’s then follow with sending an unsupported bill to BP for \$69 billion! How misguided and, indeed, how either ignorant or devious can our President be!

President Obama has shown repeatedly that the best interests of the American people are a lower priority than his ideological goals to change America from what it has been, to some mystical, socialist utopia with an energy-based standard of living equivalent to that of the late 1800s. As if the Administration could not make its ineffective, disjointed response to the Deepwater Horizon accident any worse, it did not even use previously established sea surface burn-off and dispersant procedures to minimize the effects of the spill. Then, it has inexcusably delayed approving and assisting in Louisiana Governor Bobby Jindal’s request to protect the State’s shores and wildlife habitats with offshore sand barriers, as unnecessary as having to make that request should have been. And this is the government that Congress and the President want to run healthcare, immigration, banking, carbon emissions, auto manufacturing, and everything else in American life?

The geologists, engineers, and on-site managers responsible for the Deepwater Horizon drilling effort understood that drilling to an oil reservoir through 13,000 of rock in

5000 feet of seawater would be very difficult. They knew that their geophysically defined target, typical of Gulf petroleum reservoirs, would be a complex mix of crude oil, natural gas, and brine contained in porous and permeable rock. Because of the rock and water depth, the reservoir also would be under very high pressure. In this situation, a reliable blowout preventer, a crimping device installed on the pipe near the floor of the sea, would be essential to reduce the risk of both a spill and potential explosion on the Deepwater Horizon.

Current information indicates that BP installed a defective blowout preventer and does not have a deepwater, robotically emplaced, crimping technique as a backup to the blowout preventer. Essential to the prevention of future accidents will be an objective, complete technical and managerial investigation of why a geological and engineering situation of known risks spun out of control. The primary question is, will such an investigation be possible in the politically charged, adversarial “boot on the neck” atmosphere created by President Obama and his team? Imagine if such an atmosphere had surrounded the 204 fire investigation and recovery.

Responsibility for the Deepwater Horizon accident ultimately lies with the chaotic regulatory environment for petroleum exploration created over recent decades by Congress and the Department of Interior. Will we learn anything about regulatory overkill from this tragic loss of eleven lives and disruption of business and employment in the Gulf? Elimination of access to most on-shore and near-shore oil production has driven American exploration away from more easily discoverable and produced resources

and into the much more dangerous and technically challenging deep waters of the seas and oceans. Even then, drilling and production accidents are exceedingly rare in spite of the geological, engineering, and weather-related difficulties explorers and producers face as a consequence of misguided restrictions. Long-term, history reminds us that naturally and accidentally released oil in the oceans disappears due to bacterial action. Remember that the fuel oil blackening of beaches of the world from World War II ship destruction disappeared after only a few years and ocean life survived. The Gulf oil spill will **not** be this Nation’s most serious environmental crisis: World War II tops it by orders of magnitude in more than just this respect.

If America and freedom are to survive indefinitely, the next Congress must begin to restore sanity and intelligence to national energy policy. Until economically competitive alternatives become fully feasible, fossil fuels will remain the mainstay of our economy. Our dependence on unstable foreign sources of oil has become one of our greatest national security vulnerabilities that only domestic production can solve in the next 50 years. The 2010 elections become a critical starting point to bring rational, constitutional, America-first thinking back into the Federal Government.

Harrison H. Schmitt is a former United States Senator from New Mexico as well as a geologist and Apollo 17 Astronaut. He currently is an aerospace and private enterprise consultant and a member of the new Committee of Correspondence.

27. FOREIGN POLICY AND THE CONSTITUTION #2

Harrison H. Schmitt
June 6, 2010

For Immediate Release (See Related Releases Nos. [4](#), [5](#), [22](#) of January 8, 13 and May 7, 2010)

Former Senator Schmitt Suspects Obama Agrees With Desire to End Israel as a Democracy and a Country

Israel, the Middle East's only true democracy, only true friend of the United States, and only remaining repository of Judeo-Christian values, continues to fight for survival. As world leaders appear to work hand in glove with radical Islam to destroy the Israeli state and the Israeli people, the Obama Administration gives all the appearances of desiring the same end. Not only is this stance contrary to the President's constitutional responsibility to provide for the "common Defence" of the United States, it is morally repugnant.

Providing for our "common Defence" requires that we encourage democracy and its underlying freedoms in an otherwise hostile world and protect them wherever they have taken root. Our Republic could not be sustained if isolated in a totalitarian world. This has been the foundation of American foreign policy since President James Monroe's Secretary of State, John Quincy Adams, penned the Monroe Doctrine, telling Europe to stay out of the Western Hemisphere. Defense of democracy and freedom has been the basis for America's entry into two World Wars and the many smaller, but bloody conflicts associated with resisting Soviet aggression during the Cold War. We finally began resisting the fascist totalitarianism of radical Islam in Iraq, Afghanistan, and elsewhere in the world to keep at

bay those who would destroy freedom. At the same time, we have worked to encourage democratic alternatives to the insidious ideological doctrines of radical Islam.

Since we assisted in its founding in 1948, Israel has formed a bulwark against the domination of the Middle East by non-democratic interests. Helping to maintain Israel's military prowess against its sworn state and state-supported enemies has served America's defensive interests well. The expansionist and nuclear aims of Hussein's former Iraqi regime, Assad's Syria, and the Ayatollahs' Iran, for example, so far have been thwarted by our sacrifices in two recent Gulf Wars and by our support of Israel's actions defending itself. Unfortunately, Israel, and the service it provides to America and the democratic world, has been put at extreme risk by the naïve ambitions of Barack Obama and his Administration.

The local defensive environment for Israel began to deteriorate beyond its inherent difficulties beginning with the Carter Administration's encouragement of a radical Islamic takeover of Iran. The Bush and Obama Administrations' acquiescence to the expansionist and nuclear ambitions of an increasingly radicalized Iran has placed an even heavier responsibility on Israel for its own defense. To make matters worse, the

Obama Administration has publicly and repeatedly gone out of its way to criticize Israel's internal policies and to try to force concessions in the so-called "peace" process. These concessions would create even greater dangers for Israelis in the future, particularly absent credible defense guarantees by the United States. This unnecessary criticism and interference has lowered the threshold for other governments to pile on in their self-righteous outrage at legitimate Israeli actions in its own defense.

Israel fights at the front lines of the war between radical Islam and democratic societies. It faces daily missile and suicide attacks on its population, cities, and defense forces, coming from Iranian proxies Hamas in Gaza and Hezbollah in Lebanon. To defend itself, Israel has put in place a blockade to prevent weapons from Iran and elsewhere from reaching these hostile forces by sea. Under customary international law, this is exactly what we would do and have done in the past and what many nations would do and have done as well. Legally, it makes no difference if the attacks Israel faces come from state or non-state entities. Unlike most historical blockades, however, Israel continues to deliver food, medical aid, and energy to Gaza. Preventing the delivery of weapons and fighters to enemies sworn to its destruction lies well within the norms of international law.

The current Administration's cancellation of missile defense systems in Central Europe tops the list of its abrogated responsibilities relative to the Middle East. Also, no indication exists of significant Administration efforts to stop the flow of arms and missiles from Iran, Syria, North Korea, China, and Russia to Israel's enemies in Gaza and Lebanon. Continued deference to Europe, conflicted by trade and Islamic immigrant threats, and engagement of an anti-

Semitic UN has resulted in toothless sanctions against Iranian development of nuclear weapons and the missiles to carry them. Now, Israel appears to be left to its own devices in preventing an Iranian nuclear attack that would totally destroy it and many of its nearest neighbors as well as murder many U.S. citizens. Iranian President, Mahmoud Ahmadinejad, has blatantly announced such a future attack in advance.

To make matters even worse, no effort has been made to keep Turkey within the fold of Western democracies where it previously provided the Middle Eastern anchor of NATO. Further, lack of determined opposition to the development of fascism in Venezuela has given Iran an ally in the Western Hemisphere, now augmented by trade agreements with Brazil. Finally, and possibly most seriously, the Obama Administration vociferously refuses to recognize the existence of radical Islam or its vicious Jihad against America and Western Civilization.

Why does the continued survival of Israel rise to constitutional heights for the United States? The Constitution, beginning with its Preamble, provides basic guidance on the preservation of our liberty in the face of foreign threats. The Preamble declares that the Founders established the Constitution, among four basic objectives, to "provide for the common defence" as well as to "secure the Blessings of Liberty to ourselves and our Posterity." To meet these clearly related objectives, Article II, Section 2, of the Constitution gives the President the power of "Commander in Chief of the Army and Navy". In addition, Article I, Section 8, states that "The Congress shall have the Power to lay and collect Taxes..." to "provide for the common Defence..."

The constitutional authority to determine how to perform the Government's duty to provide for defense is implicit in the designation of the President as "Commander in Chief." Congress, of course, can advise on the adequacy and nature of the President's actions in this regard, or rule on their appropriateness through the impeachment process. The Founders, on the other hand, clearly intended, based on their hard experiences in the Revolution, that there be only one final decision-maker in matters of national security. The Founders' also intended that the President bear full responsibility for success or failure, thus preventing a multitude of political "generals" from trying to manage actual military strategies.

Together, these provisions underlie nearly two and a quarter centuries of successful efforts to preserve the nation and the liberty of its people from internal and external security threats. Relative to national security, the Founders appear to have wanted both tension and joint responsibility to exist between the Executive and Legislature. But it defies logic, again given the Founders' experiences in the Revolution, to conclude that the President, elected by all the voters of the nation, would not have primacy in determining, as Commander in Chief, the specific requirements and actions that would "provide for the common Defence." This need for Presidential primacy only is reinforced by the increasing sophistication, complexity, diversity, and immediacy of external threats, requiring timely implementation of the mandated responsibilities of the Legislative and Executive Branches.

Given this hierarchy of constitutional authority, the national security related powers of the Congress should be exercised sparingly even though that body can second-guess the Commander in Chief through its funding responsibilities. In the final analy-

sis, protection against Presidential irresponsibility comes if the House of Representatives determines that grounds for Article 1, Section 2 impeachment exist or, alternatively, Congress or the people prevail in asserting through the Courts that the Executive's actions or inactions are unconstitutional.

The fundamental constitutional principle relative to Israel remains, as it has since 1948, that America's security is served best by democratically elected governments in the Middle East and elsewhere rather than by tyrants or terrorists. The United States must step up to Israel's defense, diplomatically and militarily, and much more vigorously than it has during recent Administrations. The U.S. must insure that Israel succeeds in its fight for survival and against radical Islam, in general, and Iran, in particular. The consequences of it not doing so will further encourage future terrorist attacks on America's homeland. Unfortunately, President Obama's negative mindset in this regard has been shown by his acceptance of the thesis that America should plan to "absorb" future terrorist attacks no matter the losses.

In order to bring government policy back in line with the interests of liberty, we must depend on the American voter to stay awake to the threats they face from the potentially fatal lack of action in their "common Defence" by currently elected leaders. The next Congress and then the next President have one enormous job ahead to clean up this mess.

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28. FOREIGN POLICY AND THE CONSTITUTION #3

Harrison H. Schmitt
June 9, 2010

For Immediate Release (See Previous Release No. 27 of June 6, 2010)

Former Senator Schmitt Compares the Relationship Between Israel and America

The importance of a democratic Israel to the long-term security interests of Americans stands as the rationale for continued U.S. support of that country. This fact, however, does not allow America to turn a blind eye toward serious Israeli errors committed through the years as that democracy works to preserve itself in an extraordinarily hostile world. All democracies make mistakes. But it is critical that democracies learn from their mistakes. Israel's recent attack on blockade-runners, it should be noted, was not one of those mistakes.

The most serious error made by Israel came with the attack, in international waters, on a U.S. intelligence ship, the 7725 ton *USS Liberty*, on June 8, 1967. The attack occurred during the stress and fatigue of Israel's Six Day War with three of its Islamic neighbors, but nonetheless had no rational justification. 34 of the *Liberty's* crew died and 171 were wounded.

Officially, both the Johnson Administration and the Israeli government attributed the attack to "a case of mistaken identity." Significant logic and evidence contradicts this conclusion, not the least of which include Israeli reconnaissance flights at low level prior to the attack and the intensity and duration of the attack once initiated. Many indications exist that those Israeli military

leaders with clear knowledge that this was a U.S. naval vessel still pressed the many faceted, two-hour long attack.

The motives of Israel's leadership in initiating and pressing the attack on the *USS Liberty* remain a mystery. They have claimed consistently that the attacking Israeli Defence Forces erroneously identified the *Liberty* as an Egyptian supply ship; however, the flying American flag and distinctive U.S. Navy hull markings make this explanation highly suspect. It also is possible that the Israelis feared that Soviet monitoring of U.S. communication intercepts might eventually reveal to its adversaries that an attack against Syria in the Golan Heights was imminent. Other than coincidence, there appears to be no definitive evidence of such a motive and would hardly constitute a justification for an attack against the *Liberty*. A phone call between the heads of state of Israel and the U.S. would seem to have been more logical.

Some U.S. communications during the *Liberty* incident and testimony afterwards strongly suggest that the Johnson Administration condoned the attack, allowed it to proceed without interference once begun, and significantly limited the subsequent incident investigation. Even if the Johnson Administration had a reprehensible role in

the attack or its outcome, Israel never should have agreed to collude in this course of action.

In addition to the *USS Liberty* attack, Israel conducts an intensive spying effort against the United States. One can imagine but not justify its motives for doing so: collection of classified military technology as well as advanced information on U.S. foreign policy moves. The loss of good will and the political damage, however, from this spying effort when uncovered and attributed to Israel would be and has been far greater than any value that might be gained.

The most famous Israeli spy is Jonathan Pollard. Pollard's theft included identities of U.S. agents in the Middle East and Russia as well as classified nuclear deterrent documents. Israel appears to have traded this information to the then Soviet Union for increased emigration quotas for Russian Jews. Pollard's exploits, however, make up only one of the most publicly visible penetrations of U.S. governmental and industrial entities attempted by Israeli intelligence, many successful. Numerous electronic and personal intrusions into defense and diplomatic offices in the both the U.S. and Israel have been documented.

Other than Pollard, however, the U.S. Government over many Administrations has turned a largely blind eye on the continued

evidence of Israeli spying, activity that appears to have begun at least as early as 1950 and almost certainly continues today. Some elected officials also may be conflicted in pressing on this issue as a result of significant campaign contributions from organizations sympathetic to Israel's cause.

Do these Israeli errors in policy, however overtly complicit the U.S. Government may have been in condoning them, constitute a reason to let Israel disappear as a democratic nation in the Middle East? Clearly, our own national security continues to be better served with Israel at the front lines than if those front lines move to our shores. Should both the United States and Israel work to avoid future errors? The answer is definitely "yes;" but it will take better adult supervision in the White House and in the Justice Department than we have at present. Most importantly, Israel's own leadership must realize now more than ever that they need more friends and fewer opponents in America.

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29. CLIMATE AND THE CONSTITUTION #2

Harrison H. Schmitt
July 2, 2010

For Immediate Release (See Related Release No. 10 of February 22, 2010)

Former Senator Schmitt Accuses National Academy of Conflicts of Interest in Study of Global Climate Change

Extraordinarily complex natural processes underlie changes in the Earth's climate. They represent decadal to millennial to epochal variations in weather patterns as nature continuously attempts to compensate for solar heating imbalances in and between the atmosphere, oceans, and landmasses.

Nature's attempts to restore heat balance at and near the Earth's surface take place under many complicating influences. These include the rotating Earth's seasonally variable orientation relative to the Sun; periodic differences in Earth's orbital positioning around the Sun; movement and release of heat stored in the oceans; atmospheric circulation; the Sun's variable irradiance and magnetic fields; frequent and unpredictable volcanic eruptions; and geologically slow but exorable redistribution and reconfiguration of land, ocean, and ice masses. No evidence exists that these natural processes have become more extreme in the face of climate change over the last several centuries. [1]

In this context of natural reality, the recent report, "America's Climate Choices," released May 19, 2010, by the National Research Council of the National Academy of Sciences (NAS), illustrates how far that

formerly illustrious Academy has strayed from the principles of "science." Those principles are, simply: observe, hypothesize, test, analyze, retest, and repeat this cycle until plausible, objective conclusions appear to be warranted – conclusions that others or nature can replicate.

The Academy, in contrast, has become just another political arm of the governmental establishment, promoting a federal mandate of "major technological and behavioral change" based on flawed as well as selective science. The report's conclusions that "climate change is occurring, caused largely by human activities..." and that "the U.S. should act now to reduce greenhouse gas emissions" ignore contradictory tests of such hypotheses that come through objective observations.

Unfortunately, support for the Academy's political statements also comes from Alan Leshner, CEO of the American Association for the Advancement of Science (AAAS) [2]. The AAAS, in an Essay Review of books related to the climate change debate in its *Science* magazine [3], could not even bring itself to require consideration of books dissenting from the "consensus" that current climate change is human caused [4]. Both *Science* and its near twins, *Nature* and

EOS, continue to editorialize in support of the human-caused climate change hypothesis [5]. In addition, these publications allow the same biased commentary to be included routinely in reports of observational data and modeling runs.

In taking these political, non-scientific positions, the National Academy has joined another political body, the UN's International Panel on Climate Change (IPCC), in attacking the heart of free institutions and economic prosperity. The Academy's and British Royal Society's Presidents and membership have exacerbated their loss of credibility rather than enhancing it [6] in defensive reactions and justifications after the 2009 public disclosure of fraud within the climate science political community [7]. The Royal Society takes a particularly disappointing and ironic position, as its founders' motto 350 years ago was to "accept nothing on authority [8]." The National Academy now has embarrassed itself further by using a statistical analysis of publication records as "scientific" justification of the so-called "consensus" that humans cause climate change [9].

Unfortunately, bias permeates both the reports and the published work reviewed in reports produced by the Academy and IPCC for the use of "policy makers." This bias follows from the dependency on government funding of so many climate researchers and bureaucrats as well as from the extra-constitutional political leanings of most academics today [10]. If grant applications from the researchers involved do not propose to show the effects of humans on climate, their proposals risk not being funded by bureaucrats that want justification for their grab for regulatory control. If the research conclusions do not allege an effect by humans on climate, however tenuous that effect might be, their career-essential papers probably

will not be published by politically committed journals. Not following liberal orthodoxy on climate change thus may create problems of tenure at home institutions.

If the recent climate science policy scandals [11] show nothing else, they show the existence of political bias as well as scientific fraud in the academic hierarchy of Western nations. Even the Academy's study of "America's Climate Choices" was funded by the leadership of the Congress and the National Oceanic and Atmospheric Administration (NOAA), both of which have huge political and budgetary interests, respectively, in reaching the conclusion that humans cause modern climate change. 85% of the Academy's future study funding [12] depends on concluding what your political customers, the politicians and bureaucrats, want you to conclude.

On the other hand, Ralph J. Cicerone, President of the National Academy of Sciences, correctly states "that the state of climate change science is strong;" however, ironically, he refers to the wrong aspects of climate change science when he makes that statement. Recent international scientific conferences hosted by the Heartland Institute of Chicago, the broad compilation of information contained in *Climate Changed Reconsidered* [13], and an increasing body of published research data, documented in subsequent essays, shows that observational climate change science is indeed strong.

The results of this observational scientific research and analysis show that natural processes dominate changes in Earth's climate and it is that conclusion that should drive national policy. The last thing policy makers should rely on is guidance based on assumptions put into obviously flawed computer models. It is factually, professionally, and absolutely wrong for the former Chair-

man of the National Science Board to state in congressional testimony that there exist no “specifics, alternate hypotheses, and facts” contrary to the human-caused climate change hypothesis [14]. As statements in the NAS report confirms, a socialist political agenda drives government policy and that policy seeks control over all aspects of local as well as national economic activity, particularly energy production and use.

The climate debate should not be about whether human activity can affect local and even regional climate. Levels of stored organic carbon in soils have been reduced for thousands of years by agricultural activity [15], although new carbon retention practices in the United States and elsewhere have begun to mitigate this long-term trend. Asia’s rapid industrialization and the carbon soot deposited on Tibetan glaciers, the third largest accumulation of terrestrial ice, appears to be increasing the rate of melting of at least some of those glaciers [16]. An extreme decline in regional fish stocks appears to have resulted in more abundant phytoplankton and, in turn, in the drawdown of ocean carbon [17]. Regional urban pollution, such as that in and downwind from many large metropolitan areas, constitutes a continuing concern [18]; however, great progress has been made since the 1960s in reducing such pollution, particularly in the United States [19]. Other examples exist of human impact that may or may not affect climate, such as rainforest loss and possible stratospheric ozone depletion. Satellite observations and/or biological surrogates, however, have not yet revealed the long-term natural variability of stratospheric ozone [20] since the so called “ozone hole” over Antarctica was discovered. In the case of rainforest loss, although the long term effects on carbon emissions of such loss would be difficult to measure within the spectrum of carbon sources and sinks, logic

would suggest that massive loss of rainforest would not be the desirable outcome for various biological, economic, and esthetic reasons. Finally, in the last 100 years, declining fish populations may have resulted in foraminifera biomass increase in the North Atlantic.

What do we actually know about global climate variability over the part of Earth history most relevant to the present? Actually, we know a lot. Since the last Ice Age ended about 10,000 years ago [21] (the glacial maximum lasting between 33,000 and 19,000 years ago [22]), geological and tree ring records document prolonged periods of warmth and cold, ranging from 3000 years to a few hundred years in duration [23]. The Little Ice Age of 1400-1900 [24], following the Medieval Warm Period of 600-1300, recorded the last multi-century period of global cooling during that 10,000 years, although decades-long cooling has occurred several times since.

By 1400, Arctic ice pack had enclosed Iceland and Greenland and driven Viking settlers away from their farms on those islands [25]. By the end of the 1600s, in response to the earlier climate cooling, Alpine glaciers had advanced over valley farmlands cultivated after those same glaciers had receded during the Medieval Warm Period [26]. Indeed, all of the consequences of warming prior to 1300 reversed during the next several hundred years of the Little Ice Age.

Since about 1660, the middle of the last, 70 year-long phase of the Little Ice Age, global surface and near surface temperatures have risen an average of about 0.9 °F (0.5 °C) each 100 years [27]. In response, a general retreat of world glaciers has taken place over the last century or more, not just in the last decades of the 20th Century [28], re-

peating the documented pattern of the Medieval Warm Period.

The Arctic Ocean ice pack has retreated northward since about 1800 [29]. Since 1979 and the beginning of satellite monitoring, a continuous decline in ice pack area has been alleged [30]; but with the most obvious decline only starting in about 1998. 1998 also is about the time the current cycle of decadal Northern Hemisphere warming leveled off, a correlation suggesting that wind or ocean currents may be at play more than water temperature. It should be remembered in this context, that during the Medieval Warm Period, Arctic sea ice probably largely disappeared during some summers, depending on high latitude atmospheric circulation [31], and may do so in the future for natural reasons [32]. Similarly, though only on a decadal rather than a century scale, satellite observations since 1979 show that the decrease in the area of the Arctic ice pack since 1996 appears to have reversed from its 2007 summer minimum [33]. Antarctic sea ice also has retreated from the extent reported by explorers and whalers early in the 20th Century [34]. Antarctic sea ice, however, has been expanding northward for about two decades [35] after indications of an additional gradual decline following the 1950s [36]. Further, winter ice cover on the Great Lakes, although highly variable since satellite data became available in 1973, has been rising steadily since 2006 from its minimums in that year and in 2002 [37], consistent with the current trend in Arctic ice cover.

Since the last vestiges of the most recent major Ice Age about 11,600 years ago (the end of the Younger Dryas cold period [38]), decades-long periods of warming and cooling have been superposed on even longer cycles. The longest of these cycles repeats about every 1500 years and the shortest

about every 55-60 years [39]. These latter, short, multi-decade intervals of rapid warming and cooling [40] have occurred during the current, 350-year long general warming trend. The most recent short-term variations have been cooling between 1935 and 1975, warming between 1975 and 1995, and now cooling again since 2000.

In short, nothing other than ordinary natural climate variations have occurred since fossil fuel use accelerated in the 20th Century. General agreement exists among both climate change alarmists and climate change realists that most of the slow variations over the centuries before 1949 came from natural causes [41], with a general warming trend continuing the recovery from the extremes of the Little Ice Age. Then politics took over when definitive measurements of a steady increase in atmospheric carbon dioxide became available after 1960 [42]. Since then, “carbon dioxide,” an essential ingredient for life itself, has become a stalking-horse for increased government control of consumers, private business, industry, and the economy. Sadly, even the historic Geological Society of London, of which the author has been proud to be an Honorary Member, has jumped to the remarkably unscientific conclusion that the current rise in atmospheric carbon dioxide is human-caused, even after noting that nature has caused far greater increases in the past [43].

A new scientific concern arises from calls for global geo-engineering projects to cool climate [44] even though nature has done a great job of this in the past. Considering the limitations on our understanding of nature’s role in climate, much less the uncertainties of the effects of geo-engineering and its unintended consequences, no credence whatsoever should be wasted on its advocates of tinkering with the Sun’s interaction

with the Earth's atmosphere. Resources should be applied to dealing with the consequences of change and to gathering better observational information on what change to expect.

In the name of the impossible goal of climate control through taxes and regulation [45], many in Congress wish to vote on legislation that would seriously and unconstitutionally harm the American economy and employment dependent on the strength of that economy. The Environmental Protection Agency already has assumed unauthorized, unconstitutional, dictatorial powers to regulate carbon dioxide emissions as a pollutant. Unfortunately, the Supreme Court

has joined in this scientifically ridiculous intrusion into American liberty.

These continue to be dangerous times for liberty and constitutional protection of that liberty. Election battle lines have formed for America's long-term effort to restore and maintain constitutional principles and common sense in climate policy.

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30. CLIMATE (TEMPERATURE) AND THE CONSTITUTION #3

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For Immediate Release (See Related Releases Nos. [10](#) & [29](#) of February 22 and July 2, 2010)

Former Senator Schmitt Summarizes History of Global Temperature

Ten thousand years of natural, post-Ice Age climate variability should give pause to those who maintain that current slow global warming and carbon dioxide increases result largely from human use of fossil fuels. Public confidence in that position also suffers from the exposure of fraudulent academic and bureaucratic behavior aimed at overriding normal processes of skeptical scientific review and debate. Supposedly “scientific” advocates of human-caused global warming used a mathematical trick to hide a real decline in global temperature prior to 2000 because it did not fit their hypothesis that human activities have caused global warming [\[1\]](#).

In the face of diligent and realistic climate observations by others, believers in human-caused global warming and their tightly bound socialist supporters have circled the wagons. The National Academy of Science, Nature and Science magazines, and the mainstream climate establishment have increased the volume, but not the reasonableness, of both their denunciations of disagreeing scientists and their rationalizations for the missteps of other scientists with whom they agree [\[2\]](#). The “human-caused global warming” community continues to talk only to themselves instead of engaging in a reasonable dialog with reputable disagreeing scientists. These latter scientists

want objective enquiry to take place before forcing unconstitutional legislative and regulatory decisions on an increasingly skeptical electorate—decisions that will cost both liberty and the American economy dearly.

Observational data and interpretations related to global temperature and atmospheric carbon dioxide deserve close examination before taking irrevocable and dangerous regulatory actions. If there were no other factors affecting temperature at the Earth’s surface, the balance between heat from the sun and heat re-radiated from the Earth to space would give an average surface temperature of about 0 °F (-18 °C) [\[3\]](#). Not good. Fortunately, the trapping of heat in the atmosphere by water, carbon dioxide, and other gases, generally referred to as the “greenhouse effect,” makes the planet habitable rather than being a ball of ice covered rock and water with occasional volcanic eruptions. Weather and ocean processes moderate this atmospheric heating. Natural greenhouse heat trapping effects of atmospheric water and to a lesser extent carbon dioxide and methane, add about 146 thermal watts per square meter (versus the Sun’s irradiance at the Earth of 1366 watts per square meter). With just the greenhouse effect of water and carbon dioxide, the average temperature at the Earth’s surface would be about 140°F (60°C). Fortunately, weather

phenomena have a significant overall cooling effect so that the average surface temperature of the Earth becomes about 59°F (15 °C) [4].

Geological investigations indicate that over the last 600 million years average global surface temperature appears to have been buffered roughly at a maximum of about 72 °F (22 °C) [5]. During this 600 million years, major cold perturbations to about 54 °F (12 °C) occurred about every 150 million years [6]. Over that period, carbon dioxide decreased from an estimated maximum of about 7000ppm 550 million years ago to minimum of about 300ppm around 300 million years ago [7] (current level at 385ppm) without changing the long-term average temperature at the Earth's surface. The last 53 million years were significantly colder than the previous average [8], as indicated by oxygen isotopes of shells in sea floor cores [9], but comparable to earlier cold periods.

Around 56 million years ago, marine and continental isotopic records indicate that significant new light carbon appeared in the atmosphere (the Paleocene-Eocene Thermal Maximum or PETM), but evidence also exists that a period of climate warming preceded that release of light carbon [10]. Unusual warming of the deep oceans may have released both dissolved carbon dioxide and seabed methane. Both before and after the PETM, six less extreme and shorter duration warming events have been documented [11]. In contrast to the PETM warming, a significant decrease in sea surface temperatures [12] appears to have lasted about 3 million years within a >20 million long Ice Age around 44.5 million years ago. This fall in temperature is associated with a reduction in atmospheric light carbon (¹²C) relative to heavy (¹³C) [13]. The timing of the initiation of the change in

carbon composition, however, has not yet been resolved relative to the ~20 million year long cold anomaly in sea surface temperatures during a period of already cold temperatures and continental glaciations.

43 million years ago, declining carbon dioxide concentration reached about 1400ppm, followed by three oscillations during the next 10 million years with amplitudes of about 1000ppm [14]. With one known exception [15], temperature apparently remained relatively constant during these ancient carbon dioxide oscillations. The exception occurred during the most recent oscillation when oxygen isotope ratios indicate a sharp drop in temperature [16] 33.5 million years ago. This correlates with about the time ice sheets began to accumulate on Antarctica [17] and a drop in sea level of about 40m over two million years [18]. Relative to today's values, declining atmospheric carbon dioxide levels remained relatively high (740-1400ppm) even as Antarctica cooled.

About 22 million years ago, with its continued slow migration away from Africa, Australia, and South America, the ocean distribution and currents around Antarctica began to resemble modern configurations [19], with partial deglaciation of that continent beginning about 14-15 million years ago [20]. A particularly warm two million years for the tropical Earth latitudes developed about 4 million years ago even as sea surface temperatures slowly declined toward present levels [21]. This seemingly contradictory situation apparently related to a long-term north-south expansion of the warm tropical ocean waters resulting in a factor of four reduction in the sea surface temperature gradient from the equator to at least 34 °N (~2 °C gradient versus ~8 °C, today) that lasted until about 1.5 million years ago. Along with disruptions of the El

Niño Southern Oscillation, convective tropical Hadley circulation in the atmosphere apparently slowed during this long period with both effects probably leading to significant global climate impacts.

About 2.75 million years ago [22], major ice ages began to oscillate with periods of warmth (interglacials). This occurred in spite of the concurrent anomaly in the tropical sea surface temperature gradient. Ten specific high latitude ice ages took place in the last million years, apparently correlated with a change from the Earth's 41,000-year orbital obliquity cycle to its 100,000-year eccentricity cycle as the dominant solar influence on cooling [23]. A significant decrease in the overall concentration of atmospheric carbon dioxide occurred at about the same time as this change in orbital influence with even greater, temporary reductions associated with each ice age as cooler oceans would have dissolved more of this gas; however, the reported data do not support a causal association of this decrease in carbon dioxide with the overall cooling during this million-year period [24].

Compilations of temperature changes in the oceans and seas, as preserved by oxygen isotope variations in shells from cores of bottom sediments, provide a record of natural cycles of major climate change back for 1.8 million years [25]. For example, geological analysis of features related to sea level changes over the last 500,000 years shows a remarkable correlation of these changes with major natural climate change [26]. These data further indicate the approach of the peak of the warming portion of a normal climate cycle that began with the end of the last Ice Age [27].

Terminations of past ice ages appear to be associated with increased solar heating (insolation), as orbital influences changed,

and not with triggering increases in carbon dioxide levels; although such increases certainly accompanied the terminations. Suggestions have been made recently that increase in atmospheric carbon dioxide forced temperature increases and ice age terminations over the last 20 million years or so [28]. Such speculations suffer from science's inability to adequately time-correlate most these very ancient changes in carbon dioxide levels with changes in global temperature. Carbon dioxide release from more slowly warming oceans would be expected to lag surface warming by hundreds to thousands of years [see below]. No observational support exists for a conclusion that a specific natural carbon dioxide change forced a specific temperature change.

The lesson in these variations in values for atmospheric carbon dioxide and global temperature through geologic time, at least at a million-year or so time-resolution, appears to be that no evidence exists that increases and decreases in carbon dioxide have triggered global temperature changes as derived from fossil oxygen isotope ratios. Other long-term geological and solar-related phenomena affecting atmospheric water concentrations may have overwhelmed any broad greenhouse effects related to carbon dioxide; or, alternatively, the proxies used for estimating ancient atmospheric carbon dioxide concentrations may be invalid [29]. All we really know at present is that natural variations in climate have been very complex, often extreme, and all before human industrial activity existed.

Studies of Antarctic ice cores indicate that during the last 420,000 years Earth-surface temperatures several degrees warmer than present existed during the four interglacials that preceded our own [30]. At a low time-resolution of 1000s of years, carbon dioxide in the atmosphere during these in-

terglacials apparently did not rise above 290ppm (compared to 385ppm today), and its changes would appear to be correlated directly with temperature changes [31]. On the other hand, high time-resolution ice core data indicates that both increases and decreases in atmospheric carbon dioxide lag associated increases and decreases in global temperature by hundreds to a thousand years for major long-term temperature variations [32]. The broad rise or fall in average ocean temperature would be expected to precede any effect on stored carbon dioxide due to the oceans' relatively high mass and slow circulation.

As the Earth moved out of the last major Ice Age beginning about 19,000 years ago [33], dramatic climate and temperature oscillations occurred based on analyses of oxygen isotopes [34]. These oscillations reached steady state periods of relative warmth or cold that lasted 500 to 1000 years before another major change occurred. Northern Hemisphere warming after the Younger Dryas, the last major cold period, began about 11,600 years ago and proceeded rapidly over about 100 years before a more gradual, 1500-year warming trend took over. Geological analysis of New Zealand mountain glaciers indicate that the post-Younger Dryas warming also occurred in the Southern Hemisphere [35]. From about 10,000 years ago to the present, a period of relative warm conditions, the Holocene Climate Optimum, has prevailed, although multi-decade long variations have occurred, including the Medieval Warm Period and Little Ice Age discussed below.

Recent study of sediment cores from the Antarctic margin on the Pacific side of the Western Antarctic Peninsula suggests a somewhat different temperature history for that region versus the Northern Hemisphere [36]. Although this analysis of proxies for

sea surface temperature shows a comparable warming between 12,000 and 9000 years ago after the Younger Dryas, a 7000-year erratic but overall cooling trend followed. This is in contrast to the Northern Hemisphere warm period over this time, documented in studies of tree rings. Another Antarctic warm interval, however, appears to have existed between about 1800 and 500 years ago, possibly correlated with the Northern Hemisphere's Medieval Warm Period. Cooling set in again between 500 and 200 years ago, possibly associated with the north's Little Ice Age.

As discussed above, a particularly prolonged warm period in the current interglacial between 9000 and 6000 years ago has been documented, most recently in oxygen isotopic analyses of Greenland ice sheet cores [37] and in Great Lakes Region tree ring analyses [38]. That warm period resulted in significant thinning of Greenland's ice sheet to thicknesses within a 100m of those of today. Several other warm periods have occurred since, the most pronounced of which has been termed the Medieval Warm Period (500-1300) [39]. Warm periods of this nature, sometimes referred to as "climate optimums" or "climate anomalies," were largely highly beneficial to fledgling human cultures. During the latter centuries of the Medieval Warm Period, however, overpopulation relative to available technology, severe weather and drought, and other factors forced migrations from many centers of civilization [40], primarily to places with more reliable water resources. These adverse effects of warming, however, stand in contrast to the advantageous migrations of modern humans about 22,000 years ago from Asia into the Americas during the last Ice Age. At that time, low sea levels created a land bridge between Asia and North America [41]. Adaptability is the key.

After a century-long transition from the Medieval Warm Period, the Little Ice Age of 1400-1900 recorded the most recent interval of significant global cooling. Global cooling characterized the Little Ice Age in most regions of the Earth, accompanied in some areas by droughts [42]. By 1400, however, Arctic ice pack had enclosed Iceland and Greenland and driven Viking settlers away from their farms on those islands [43]. By the end of the 1600s, in response to the continued climate cooling, glaciers had advanced over valley farmlands cultivated as those same glaciers receded during the Medieval Warm Period [44]. Indeed, essentially all of the consequences of warming prior to 1300 reversed during the next several hundred years of the Little Ice Age.

Since about 1660, gradual global warming of about 0.9 °F (0.5 °C) each 100 years has occurred [45], although decades-long cooling events have interrupted this trend. Antarctic sea ice, however, now has been expanding northward for about two decades [46] after indications in the Law Dome ice core of an additional gradual retreat between about 1960 and 1990 [47].

As geological proxy records for temperature approach the present, analyses show that measurement of modern, short-term trends in Earth surface temperature are suspect [48], if only because thousands of rural measuring stations have disappeared in favor of reliance on relatively warm airport and other urban stations [49]. Difficulties also arise from many land sensors being located within the expanding effect of urban heat islands [50] and many sea surface temperature measurements being inconsistently determined [51]. Rigorous investigation and analysis of the sources of data that appear to show Earth surface warming accelerating during the last century indicates many non-climatic factors may influence the quality

and magnitude of measurements [52] if not the overall trend in slow warming. Government agency reports that the first decade of the 21st Century set records for warmth, based largely on Earth surface-based instruments [53], appear inconsistent with satellite and other observations and may be biased by the measurement problems cited here.

After 1979, earth-orbiting satellites have provided data on temperature variations through globally averaged, microwave determination of temperatures of the lower atmosphere [54]. These measurements are independent of local biases affecting temperatures measured at weather stations [55]. Global circulation models, on which the human-caused climate change hypothesis depends for much of its support, appear to have failed to make correct predictions of the temperature of the lower atmosphere (troposphere) looking back over the last 50 years of direct satellite-based observations. Reports that instrument re-calibrations now confirm the model predictions [56] remain in sharp dispute [57]. Additionally, the long-term trends of 20th Century atmospheric circulation indices representing several major oceanic oscillations do not support climate model simulations for the same period [58].

Near-surface atmospheric temperature variations since 1979, as well as over the last 120 years, correlate much more closely with solar variations than with the steady rise in carbon dioxide levels [59]. Analyses of much less variable sea surface temperatures (SST) indicate that such temperatures rose from about 1900 to the 1940s, fell until the mid-1970s, and subsequently have been rising [60]. Other reports, however, have SST leveling off or decreasing [61] with no net heat increase for the last 58 years [62], particularly since 2003 [63] and possibly since 1990 [64]. The long-term climatic im-

plications of this apparent broad scale ocean cooling are not known. An abrupt drop in SST in the Northern Hemisphere at a minimum in the 11-year sunspot cycle between about 1968 and 1972 has not yet been fully explained, but it illustrates nature's variability over relatively short time spans.

Another temperature anomaly relative to the long-term slow warming trend exists in satellite data that shows a decline in Antarctic snowmelt between 1979 and 2009 [65]. Research on this anomaly suggests that levels of Antarctic snowmelt correlate with oceanic and atmospheric interactions in the mid to high latitudes of the South Pacific (the El Niño-Southern Oscillation in ocean and atmosphere temperature and the Southern Hemisphere Annular Mode of pressure gradient variation). These interactions, on the other hand, show no correlation with the slow trend in modern global warming [66]. In contrast to Antarctica, snowmelt in Greenland appears to be on the increase and may be contributing to more rapid movement of its ice sheet [67]. Additionally, reports of accelerating ice sheet mass loss in Greenland and Antarctica [68] need to be reconciled with reports that conflict with these assessments [69].

Throughout geologic history, biological systems' responses to global cooling and warming show the effects of natural climate change. Extinctions, regional die-offs, redistribution in altitude and latitude, and basic evolutionary change of plant and animal species in response to climate change have been the rule, not the exception. Increased research and media scrutiny makes us more aware of what plant and animal species do continuously, if often episodically, in response to change. Polar bear fossil evidence [70] and their modern distribution [71] indicate that the species clearly has adapted repeatedly to over 100,000 years of climates

warmer than at present, such as the Medieval Warm Period. Corals have survived hundreds of million years of extraordinarily geological and climate change.

Glacial and interglacial temperature changes of at least 5 °C between 324,000 and 193,000 years ago in the Pleistocene caused the redistribution of Andean mountainous plant species by as much as 1000m [72]. Elsewhere, tree mortality may be on the upswing as species adjust to gradual, warming induced changes in the location of optimum habitats [73], but this surely also happened during other warm periods when we were not around to notice. Net terrestrial primary biological production, however, has remained roughly constant over the last decade although down slightly from the previous decade [74]. Warming induced die-offs in some plant species will be compensated to some degree by increased growth in other species due to increases in available atmospheric carbon dioxide [75]. Local variations in biological production in response to Arctic Sea ice retreats and redistributions have been documented; however, it is not clear that there has been a regional reduction in primary production as measured by chlorophyll concentrations [76].

Although the observational, historical, and geological evidence indicates strongly that global scale changes in the climate, ocean chemistry, and biological activity have roots in natural processes, the concentration of human pollution in local areas of the Earth have documented adverse impacts [77]. It remains increasingly in the economic and societal interests of the private sector and State governments to stop and reverse adverse, unnatural local changes for which they bear constitutional responsibility.

Private sector, State, and Federal control of their contributions to regional local pollu-

tion effects, and consumer, shareholder, and voter insistence on prevention and cleanup, form an integral part of the nation's future. Appropriate and restrained Federal regulation within the Founders' logically constrained intent of Article I, Section 8, Clause 3, of the Constitution, that is, the Commerce Clause, can contribute greatly to the instigation of this new environmental ethic. On the other hand, unconstitutional coercion will make matters worse while at the same time eroding essential liberties. The long road back to constitutional protection of the envi-

ronment began with the elections of 2010, and must continue with the elections of 2012 and beyond.

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31. CLIMATE (CARBON DIOXIDE) AND THE CONSTITUTION #4

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July 19, 2010

For Immediate Release (See Related Releases Nos. [10](#), [29](#) & [30](#) of February 22, July 2, & 14, 2010)

Former Senator Schmitt Summarizes History of Global Atmospheric Carbon Dioxide

Given how little we actually know about climate, and in particular about the boogymen called “carbon dioxide,” the President, the Environmental Protection Agency, Congress, and some ideological State governments and politically fearful corporations have chosen an extraordinarily dangerous path in attempting to stop natural change. The climate science establishment provides a continuous drumbeat of model-based rather than observation-based predictions in support of moving along this path of economic decline [\[1\]](#). The scientific rationale behind this proposed massive intrusion into American life requires more than a “consensus” of ideologically like-minded climate analysts and bureaucrats [\[2\]](#).

All of the political focus and almost all of the publicly reported scientific allegations related to present and future climate change centers on atmospheric carbon dioxide rather than on the immense complexity of natural climate. Not only do the legislative and regulatory proposals to control human production of carbon dioxide violate many provisions of the Constitution of the United States of America; but also the so-called scientific justifications for those proposals do not adhere to basic principles of scientific enquiry and analysis that require objectivity,

skepticism about one’s own ideas as well as those of others, hypothesis testing and re-testing, and debate. [See essays [10](#) and [29](#)].

After water, carbon dioxide constitutes the second most important greenhouse gas in the atmosphere, but still makes up only 0.05% by weight compared to about 2.7% for water. There remains, however, significant uncertainty about the relative effects of water and clouds versus carbon dioxide. The science of “radiative transfer physics” relates to the greenhouse contribution of any given atmospheric gas. Pure radiative physics considerations indicate that water dominates by about a factor of 3 [\[3\]](#); however, the effect of clouds is poorly understood. Some observers suggest that water and clouds dominate the greenhouse effect in the atmosphere by a factor of about 10-20 over other components [\[4\]](#). Water absorbs infrared radiation over a much broader range of wavelengths than does carbon dioxide, and water and clouds, unlike carbon dioxide, also adsorb radiation due to collisions between molecules or particles that also act briefly like complex, adsorbing molecules [\[5\]](#). The fact that climate models using current understanding of radiative transfer physics fail to predict observed temperature trends in the lower atmosphere (troposphere) [\[6\]](#) indi-

cates that the models lack some important parameters or observational controls. Our quantitative knowledge of the actual concentrations and distribution of water in the atmosphere, feedbacks between various heating and cooling effects, and the weather phenomena that affect these parameters, can only be described as very poor [7]. All discussions of water as a greenhouse gas should be tempered by recognition of this ignorance.

Carbon dioxide, of course, forms an essential ingredient for the plant and marine life on Earth on which all other life depends. Indeed, the planet life essential to human existence initially evolved in the geologic past at levels of carbon dioxide many times higher than exist today and still grows significantly more vigorously at higher carbon dioxide levels, particularly with increasing temperature [8]. Existing plant life obviously has adapted to a long-term trend of decreasing atmospheric carbon dioxide that has prevailed over the last 175 million years [9]. In that context, studies of the sizes of fossil Ginkgo leaf stomata (gas exchange pores) indicate that high, but erratic carbon dioxide levels persisted in the Western United States, and certainly across the Earth, from 250 to 65 million years ago [10].

Direct, continuous measurements of carbon dioxide in the atmosphere at the top of Mauna Loa, Hawaii, over the last 53 years appear to show a steady increase from 260 to 385ppm, [11] amounts many times lower than those for most of Earth history. Unfortunately, validity of Mauna Loa measurements is not without its questions [12]. These data have been adjusted by assuming a constant value for atmospheric carbon dioxide emissions from the burning of fossil fuels [13]. The raw data from Mauna Loa show that carbon dioxide emissions are not constant and actually showed a decrease af-

ter 1992 [14]. Mauna Loa measurements, however, may be the best we can do until satellite measurements are available. Indeed, atmospheric carbon dioxide concentrations only declined to about 260ppm approximately 9000-years ago, or some 19,000 years after slow warming began following the peak of the last major Ice Age [15]. During the Mauna Loa measurement period, at least 50% of the carbon dioxide produced by fossil fuel burning cannot be accounted for even if one makes the unlikely assumption that the measured rise since 1958 is entirely the result of fossil fuel burning. Advocates of human-caused global warming see this “Missing Sink” for carbon dioxide as lurking somewhere, yet to be discovered [16]. The missing carbon dioxide is probably in the oceans but definitely not in the atmosphere.

Carbon isotope ratios appear to be the only means to measure how much atmospheric CO₂ has resulted from the burning of fossil fuels. Only about four percent of modern carbon dioxide in the atmosphere and upper-ocean today can be shown to have its origins in the burning of fossil fuels, based on ratios of stable carbon isotopes [17]. Although one would think that an isotopic analysis and mass balance calculation would be an obvious project to undertake, the just referenced publications appear to be the only such analysis published [18]. Such an analysis is possible because geological processes (metamorphism) associated with fossil fuel formation from plant debris, concentrate the lighter isotope of carbon (¹²C) in coal and oil. In contrast, Earth-surface biological processes tend to produce higher proportions of the heavier carbon isotope (¹³C). Analysis of carbon isotopes indicates that isotopically heavier non-fossil fuel sources of carbon dioxide continue to dominate new contributions of this gas to the atmosphere. Natural emissions of methane (CH₄), the third most

important greenhouse gas, reinforce this isotopic picture further as experiments indicate that methane passing through a column of rock becomes isotopically lighter [19].

No significant evidence exists that changes in atmospheric carbon dioxide drive global temperature variations [20]. The last 50 years of steady increase in carbon dioxide of one molecule per 100,000 molecules of air every five years has had no demonstrable effect on the multi-decade cooling and warming cycles since 1979 when collection of temperature data by satellite began to augment other measurement sources. Cooling between 1935 and 1975 and after 2000 [21] occurred even as a steady rise persisted in atmospheric carbon dioxide. The slow long-term warming since the coldest portion of the Little Ice Age (500-1900) shows no signs of acceleration during 150 years of industrialization and use of fossil fuels. This warming has averaged about 0.9 degree Fahrenheit (0.5 degree Centigrade) per 100 years for the last 350 years [22].

The mathematically derived maximum sensitivity of surface temperature to doubling atmospheric carbon dioxide, to about 760ppm, is 3.5-5.5 °F (2-3 °C). This calculation is tightly constrained by over three decades of records of both carbon dioxide concentrations on Mauna Loa and global temperatures measured by satellite [23]. At the rate of carbon dioxide increase since 1960, doubling from today would occur in about 150 years, assuming that there were no prolonged intervals of global cooling. Doubling the atmospheric content of carbon dioxide just from new fossil fuel emissions, however, would require burning an unrealistic quantity of fossil fuels as most new emissions ultimately will end up dissolved in or precipitated from the oceans.

Should the observed rate of natural warming since the Little Ice Age continue during the next 150 years, the global temperature would increase about 1.4 °F (0.7 °C) or about one-third of that if atmospheric carbon dioxide were doubled. Barring temporarily increased emissions from major volcanic eruptions [24], this suggests that the long-term *rate* of increase in carbon dioxide, at least in part, actually may be a measure of the *rate* of natural warming, reflecting release of gas from global sinks, particularly the deep oceans [25]. Recent studies and investigations of deep sea cores, for example, indicate a significant release of carbon dioxide from the Southern Ocean during the waning millennia of the last Ice Age [26].

Major non-fossil fuel sources of modern carbon dioxide [27] include volcanic eruptions [28], input from rivers [29], biological processes and decay, and, probably most importantly, release from the oceans due to slow warming over the past three and a half centuries. Major volcanic eruptions occur every few years with each eruption releasing about two times the mass of current annual emissions from fossil fuel use [30]. As would be expected due to their huge capacity to hold carbon dioxide and the rapid exchange between the ocean and atmosphere, the oceans regulate the amount of that gas in the atmosphere as climate variations occur over the scale of decades to centuries [31]. They do so by containing about 50 times the dissolved carbon dioxide present in the atmosphere [32], including derived chemical species, with solubility increasing with decreasing temperature [33]. Over at least the last 130 years, the varying *rate* of increase of carbon dioxide in the atmosphere closely follows temperature increases and decreases [34]. Overall, however, the fraction of new carbon dioxide emissions absorbed by the oceans appears to have remained roughly

constant for the last 250 years, if not much longer.

Where, then, is all the carbon dioxide from fossil fuels that is not in the atmosphere [35]? Geoscientists have long known that most atmospheric carbon dioxide cycles through the upper ocean every 5-10 years [36]. Some new carbon dioxide, with estimates of 20-35 percent of new emissions from all sources [37], cycles down into cold deep waters where its solubility is greatest and where recycling times slow to hundreds or thousands of years [38]. Some carbon dioxide goes into organic and inorganic deposition of calcium carbonate that ends up in the sediments on the ocean floor. Life processes have sequestered significant carbon in new biomass, particularly in phytoplankton [39] and non-edible hydrocarbons [40] in the oceans. Accelerated rock weathering also occurs [41] with the calcium released precipitated as carbonate in soils and ocean sediments.

Although atmospheric carbon dioxide has risen slowly in response to slow warming following the Little Ice age, ice cores suggest that atmospheric methane (CH₄) has been rising for about 5,000 years only to accelerate in the last 200 years [42]. Like major climate changes, the variation in atmospheric methane over thousands of years appears to correlate with systematic variations in the precession of the Earth's orbit around the Sun [43]. The nearer term acceleration in the quantity of methane has been attributed to human activity [44], but, as with increased carbon dioxide concentrations, it also correlates with the post-Little Ice Age warming of the last 350 years. Warming may be increasing the rate of release of stored methane as well as the rate of biological methane production through an increase in plant productivity due to higher temperatures and carbon dioxide fertilization

as well as more rapid decomposition rates [45].

Studies of the history of atmospheric gas concentrations show that natural, non-volcanic increases in carbon dioxide and methane normally *follow*, that is, lag global temperature increases by several hundred to a thousand years [46]. Similarly, and even more clearly, natural decreases in carbon dioxide and methane *follow*, that is, lag global temperature decreases. This suggests that current increases in atmospheric carbon dioxide and methane reflect, at least in large part, a response to the average century-by-century global temperature increases since about 1660 as those increases gradually permeate the deep oceans. This cause and effect reflects the fact that increased temperature will accelerate the release of both carbon dioxide and methane [47] from warming oceans and biological processes.

Climate scientists ignore the lag between global temperature increases and oceanic and biological carbon dioxide release at their peril. For example, oxygen isotope analysis of cores from the Southern Ocean discloses that a temperature oscillation at about 40 million years was quite extreme [48]. A major increase in atmospheric carbon dioxide appears to have been associated with this temperature rise. The analysts, however, do not know which came first, a rise in temperature or a rise in carbon dioxide. They dismiss as unlikely any potential role for any other cause of global atmospheric and oceanic heating even though strong correlations exist between ice ages and orbital cycles of the Earth. Similarly, others assume that modern increases in atmospheric carbon dioxide cannot be the result of anything but fossil fuel uses [49] even though well-recognized natural increases have occurred in the geologic past. The potential positive or negative greenhouse effects of the de-

layed response of atmospheric concentrations of carbon dioxide to temperature changes might affect the ultimate scale of those temperature changes; but the complexities of water and cloud feedback related to atmospheric carbon dioxide may make such a determination difficult at best [50].

Major, long-term carbon dioxide emissions resulting from huge outpourings of lava, as occurred over ~600,000 years from the Central Atlantic Magmatic Province (201 million years ago) [51], also may be instructive as to the relative roles of atmospheric components in climate change. This particular series of eruptions appears to have raised atmospheric carbon dioxide from about ~2000 to ~4400ppm with no identified associated global temperature anomaly. In turn, this suggests that volcanic carbon dioxide, even at elevated levels that may have persisted for hundreds of thousands of years, is not an effective greenhouse gas given other potential complexities such as co-produced aerosols and clouds that are known to cause net cooling of the atmosphere.

The scientific rationale behind the Administration's and Congress' proposed massive intrusion into American life in the name of climate change requires more than a "consensus" of like-minded climate analysts and bureaucrats about "carbon dioxide." It requires a recognition that climate has changed in both the recent and geological past with little or no correlation with changes in atmospheric carbon dioxide concentrations. Bad science and unconstitutional usurpation of the natural rights of the people and the constitutionally reserved powers of the States did not sit well with the electorate in 2010 and should not in subsequent elections.

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32. CLIMATE (ICE CORES) AND THE CONSTITUTION #5

Harrison H. Schmitt
July 23, 2010

For Immediate Release (See Related Releases Nos. [10](#), [29](#), [30](#) & [31](#) of February 22, July 2, 14, and 19, 2010)

Former Senator Schmitt Summarizes the Role of Greenland and Antarctic Ice Cores in Climate Science

Analysis of ice cores from Antarctica [\[1\]](#) and Greenland [\[2\]](#) play an important role in understanding the history of global temperatures and atmospheric concentrations of carbon dioxide, methane, and other gases and aerosols. Through analysis of dust, they also provide up to 800,000-year chronologies of global scale volcanic eruptions and major trends toward desertification. Clearly, data from ice cores play a critical underlying role in the science of climate change.

Unfortunately, ice cores do not always appear to be a totally reliable record of past carbon dioxide or methane concentrations in the atmosphere. Their information needs to be confirmed by consistency with data from other sources. Particular care must be taken in the interpretation of the carbon dioxide “record” in ice cores due to core-specific uncertainties in the mechanics of gas preservation over time [\[3\]](#).

In some cases, the trapped “atmosphere” in the ice sheets may not be part of a closed system. To be a closed system for carbon dioxide or methane, no gas components can escape or be added during the burial process; liquid water cannot have interacted with the gases; none of the trapped gas com-

ponents can combine, separate, diffuse, or solidify; and all components must stay in the same proportions as pressure increases with time due to added ice above. The observational science of ice has demonstrated that for some cores all these conditions do not hold. Further, the process of core extraction from great depth to surface pressure may open and disturb the gas systems.

For example, the Siple Antarctic ice core would suggest that carbon dioxide reached a level of about 330ppm in about 1900. Comparison with the 1960 initial Mauna Loa measurement of 260ppm suggests that either (1) the Siple data is just wrong, or (2) there was a drop of about 60ppm in carbon dioxide level between 1900 and 1960, or (3) it takes 80 some years for the carbon dioxide gas system to close [\[4\]](#). This discrepancy does not appear to have been resolved by the climate community [\[5\]](#); but the smooth shape of the unaltered Siple core carbon dioxide curve as a function of core depth (approaching a constant level with increasing core depth/age) suggests it might not ever have been a closed system. Over time, carbon dioxide in the sampled Siple ice may have gradually equilibrated to a constant carbon dioxide value of about 280ppm now indicated in the 1720-year old and older lay-

ers. Also, this core suffered some melting during transport and prior to analysis [6]. An additional new problem to watch for has been identified at the Dome A site related to freezing from the base of the East Antarctic Ice Sheet, a process that could affect the oldest ice potentially available at some locations [7].

Not surprisingly, considering the known variability in ice preservation, measured carbon dioxide concentrations in the trapped gases of many cores older than about 300 years hold remarkably constant over the last 7-8000 years of ice accumulation [8]. This constancy is incompatible with variability shown in other data, including that from other ice cores and from preserved Ginkgo leaf stomata, both indicating significant variation during that period. Stomata are pores through which a plant takes in carbon dioxide. They vary in size depending on the carbon dioxide concentration in the air; and preserved stomata suggest that carbon dioxide levels ranged between 270 and 326ppm over the last 7-8000 years [9].

Some Greenland ice cores do not show expected temperature driven carbon dioxide increases during the Medieval Warm Period (~800-1300) or the expected decreases during the Little Ice Age (~1400-1900) [10], although these events show clearly in other cores [11]. This further indicates that some ice cores potentially give an unreliable history of atmospheric carbon dioxide, nitrogen, and methane concentrations. On the other hand, up to 123,000 years of climate temperature variations measured in three deep cores from the Greenland ice sheet (GRIP, GISP2, and NGRIP) appear to be consistent with other climate proxy data, such as North Atlantic sediment cores [12].

Analyses from the EPICA Dome C and Vostok cores of the Antarctic ice sheets, on

the other hand, show plausible parameter variations. A strong correlation exists back to ~800,000 years ago between carbon dioxide and methane concentrations and deuterium and oxygen isotopic temperature determinations [13]. The approximately 500-year time resolution of these correlations, however, remains insufficient to determine if carbon dioxide and methane changes lead or lag temperature changes. Other, higher resolution ice core information indicates that increases in gas concentrations lag increases in temperature by hundreds of years [14]. Other geological studies suggest a similar lag. For example, about 56 million years ago, marine and continental isotopic records indicate that significant new light carbon appeared in the atmosphere, but isotopic evidence from mammalian teeth stratigraphically below the carbon anomaly indicates that a warming period preceded that release [15].

Although carbon dioxide measurements can be suspect in some ice cores, data from many others constitute extremely valuable records of additional parameters that exist within truly closed subsystems. For example, Greenland ice core data indicate that large climatic temperature shifts can occur over a very few years. Oxygen isotopes, deuterium, dust and calcium, sodium, and ice accumulation rates support data from cave deposits that indicate rapid cooling often follows periods of gradual natural warming [16].

The uncritical use of ice core data has characterized ideological presentations by various politicians as well as some climate scientists. One result of the 2010 and future elections must be to place wise officials in policy-making positions in Washington and in the various State Governments. These new officials must not only be committed to having access to good climate science and

debate but also to preventing bad science from being used to justify the further erosion of American liberty and constitutional government.

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33. CLIMATE (OCEANS) AND THE CONSTITUTION #6

Harrison H. Schmitt
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For Immediate Release (See Related Releases Nos. [10](#), [29](#), [30](#), [31](#) & [32](#) of February 22, July 2, 14, 19, and 23, 2010)

Former Senator Schmitt Summarizes Dominating Role of Oceans in Climate Change

The scientific rationale behind the Environmental Protection Agency's proposed massive intrusion into American life in the name of fighting climate change has no supporting scientific or constitutional justification. This hard left excursion into socialism, fully supported by the Democrat Congressional Leadership, some States, and the President, has no basis in observational science as has been discussed previously relative to climate history, temperature, and carbon dioxide.

The oceans of the Earth play the dominant role in the perpetuation and mediation of naturally induced change of global climate [\[1\]](#). Density variations linking the Northern and Southern Hemisphere portions of the Pacific and Atlantic Oceans through the Southern Ocean drive the primary circulation system that controls hemispheric and global climate. Differences in temperature and salt concentration produce these density variations that circulate heat around the planet. For the last several years in this circulating environment, the sea surface temperature of the oceans appears to be leveling off or decreasing [\[2\]](#) with no net heat increase for the last 58 years [\[3\]](#) and particularly since 2003 [\[4\]](#) and possibly since 1990 [\[5\]](#). The long-term climatic im-

plications of this recent broad scale ocean cooling are not known.

Density increase due to evaporation in the North Atlantic normally creates a salt-rich, cold, deepwater current that generally flows south to join the Antarctic Circumpolar Current. Upwelling from that Circumpolar Current brings nutrient and carbon dioxide-rich deep seawater into the upper Southern Ocean. This Southern Ocean water then moves north into the Pacific toward the equator where it joins a warm water current flowing from the North Pacific, through the tropics and the Indian Ocean, and then northward through the Atlantic to become the Gulf Stream. The Gulf Stream flows into the North Atlantic where, as part of a continuous process, wind-driven evaporation increases salt concentration and density and feeds the deepwater flow back to the south. Natural interference in the normal functioning of the ocean conveyor can occur. At times during the Last Glacial Maximum between 23,000 and 19,000 years ago, strong evidence exists that current flow in the Atlantic changed, bringing old, deep water from the Southern Ocean, northward [\[6\]](#), rather than from the Indian Ocean as is the pattern today. Also, melting of Northern Hemisphere ice sheets, accumulation of

melt-water behind ice dams, and abrupt fresh water inputs into the North Atlantic cause major disruptions in global ocean circulation [7]. For example, as the North Atlantic cooled 18,000 to 15,000 years ago due to meltwater infusion, extreme, long-term drought prevailed in the monsoon regions of Africa and Asia [8].

The oceans both moderate and intensify weather and decadal climate trends due to their great capacity to store solar heat as well as their global current structure, slow mixing, salinity variations, wind interactions, and oscillatory changes in heat distribution over large volumes [9]. The Northern Pacific Decadal Oscillation (PDO) [10], the El Niño-La Niña Southern Pacific Oscillation (ENSO) [11], the long period “anchovy-sardine” Southern Pacific Oscillation [12], the Gulf Stream Northern Atlantic Oscillation (NAO) [13], the Indonesian Through-Flow (ITF) [14], the Agulhas Current [15], and other related ocean currents and cycles have demonstrably large, decadal scale effects on regional as well as global climate [16].

Possibly the greatest oceanic influence on global climate results from the full hemispheric reach and scale of the Southern Ocean’s Circumpolar Current as it circulates around Antarctica and between the continents of the Southern Hemisphere [17]. In particular, the northward migration of the cold to warm water front off South Africa during ice ages may restrict warm, salty water of the western Indian Ocean’s Agulhas Current from entering the South Atlantic and eventually amplify ice age cooling in North America and Europe [18].

In several major portions of the global ocean heat conveyor, natural variations in heating, evaporation, freshwater input [19], atmospheric convection, surface winds, and

cloud cover can influence the position and strengths of related local ocean currents near the continents. This variation in current positioning, therefore, modifies carbon dioxide uptake and release, storm patterns [20], tropical cyclone frequency [21], phytoplankton abundance [22], drought conditions, and sea level rise that drive the reality of, as well as our perceptions of climate change.

For example, since about 7000 years ago, sea level rise has averaged about eight inches (20cm) per century for a total of about 55 feet (16m) [23]. This same approximate rate appears to have held from 1842 to the mid-1980s [24]. The trend in sea level rise between the early 1900s and 1940 showed no observable acceleration attributable to increasing atmospheric carbon dioxide [25]. Satellite data show an apparent 50% increase of this rate after 1992, but this presumably will slow again soon due to the effects of the current period of global cooling. If the post-Ice Age slow rate of long-term global warming (about 0.5°C per 100 years) should continue for 100 years, the total sea level rise attributable to worldwide glacier melting and ocean thermal expansion would be no more than about four inches (10 cm) [26].

Greenland’s ice sheet also plays a cyclic role in sea level changes. In the 1950s, Greenland’s glaciers retreated significantly only to advance again between 1970 and 1995 [27], a pattern of retreat and then advance repeated again between 1995 and 2006 [28]. Predicting future sea level rise from short-term observation of Greenland’s glaciers would seem to have little validity, particularly as there appears to be a half a decade lag in observable melting and ice accretion responses relative to global temperature variations [29]. The same conclusion now can be made relative to Himalayan glaciers [30].

There also seems to be little danger of a catastrophic melting of the East Antarctic Ice Sheet that would cause a major rise in sea level [31]. Great uncertainty also exists relative to the natural dynamics and history of the West Antarctic Ice Sheet with Ross Sea sedimentary cores suggesting that major cycles of ice cover changes have occurred over the last five million years [32]. Overall, short-term sea level changes relate more to local geological dynamics in underlying Earth's crust than to glacial variations [33].

Compilations of temperature changes in the oceans and seas, as preserved by oxygen isotope variations in shells from cores of bottom sediments, provide a record of natural oceanic reactions to cycles of major climate change back for 1.8 million years [34]. For example, geological analysis of sea level changes over the last 500,000 years show a remarkable correlation with major natural climate change [35]. These data further indicate that the Earth probably is approaching the peak of the warming portion of a normal climate cycle that began with the end of the last Ice Age, about 11,500 years ago [36].

The oceans play the major role in removing carbon from the atmosphere; however, the total carbon in the oceans and its distribution remains poorly understood [37]. Seawater calcium and various inorganic and organic processes in the oceans fix carbon from dissolved carbon dioxide as calcium carbonate [38], parts of planktonic and benthic organisms, and inedible forms of suspended carbon [39]. In so doing, these processes constitute major factors in global cycles of atmospheric carbon dioxide concentration. Calcium availability in the oceans, in turn, relates to major geological dynamics, including mountain building, volcanism, river flows, and the growth, alteration, and destruction of crustal plates beneath the oceans.

Over the last 28 million years, marked variations in the ratios of precipitated calcium isotopes from seawater, particularly beginning about 13 million years ago, indicate major changes in sources of calcium rather than major variations in the quantity of atmospheric carbon dioxide [40]. This change in seawater calcium isotopic makeup may relate to events that included the partial deglaciation of Antarctica [41]. As most plant activity requires carbon dioxide, low atmospheric carbon dioxide values would reduce the rate of biologically assisted rock weathering. A limit on such weathering may buffer minimum atmospheric carbon dioxide to between 150 and 250ppm by limiting levels of seawater calcium [42].

Significant introductions of calcium into the oceans from any source would be expected to result in a drawdown of atmospheric carbon dioxide to maintain chemical balances in local as well as global seawater. Ultimately, the history of seawater calcium concentrations may explain many of the long-term variations in carbon dioxide levels shown in various studies; however, correlations between calcium dynamics and carbon dioxide levels are not at sufficient geological resolution to make firm, dated correlations. Similarly, anomalous introductions of carbon dioxide, particularly those caused by major volcanic events, can disrupt normal ocean processes involving calcium. This appears to have happened, for example, about 200 million years ago [43] and 120 million years ago [44]. Such events remain unpredictable and rare and, other than in two or three extreme long past examples, do not simulate the adaptive responses of the biosphere as do the usual long-term variations in atmospheric carbon dioxide due to natural cycles of warming and cooling.

Very slightly reduced ocean alkalinity (ocean pH is stable at 8-8.2 and may be higher in shallow water [45]) of the local environments of sea dwelling organisms

may occur related to the absorption of new emissions of carbon dioxide, natural or otherwise [46]. On the other hand, extreme alarmist hand wringing to the contrary [47] attempts to make it appear that the oceans are acidic (pH less than 7.0). Loss of ocean carbon dioxide due to naturally rising temperature works to mitigate acidification trends as will organic and inorganic processes that control ocean acidity by broad scale chemical buffering (reactions going forward or back depending on chemical concentrations) [48].

Iron ion and iron complex concentrations in seawater, mediated by oxidation potential (Eh) and hydrogen ion concentration (pH), play an additional role in organic carbon fixation. Relatively simple laboratory experiments suggest that decreases in ocean alkalinity might reduce availability of chelated iron in the life cycle of phytoplankton [49]. The complexity of this process in nature, however, and the many other variables that potentially would play a role in iron metabolism, indicate a need for a much more comprehensive experimental analysis before conclusions can be drawn.

Additionally, there appears to be a relationship between sea surface temperature and phytoplankton biomass in the oceans as intuitively might be expected. Phytoplankton are estimated to constitute approximately half of the Earth's total biomass. Increasing sea surface temperature over the past 110 years post-Little Ice Age warming, however, appears to be correlated globally with declining biomass [50]; although individual ocean areas show significant variability. Over about 2000 years, foraminifera biomass in the far North Atlantic seems to correlate inversely with water temperature until, strangely, about 1900, the end of the Little Ice Age cold period [51]. At that point, warming temperature correlates with in-

creasing biomass of foraminifera. It is clear that more extensive integration of historic, modern, and satellite observations, as well as data on predator abundances, biomass preservation in sediment cores, and ice cover effects over time will be required to understand these relationships. It may be, for example, that declining fish populations have resulted foraminifera biomass increase over the last 100 years.

Exactly what may happen in specific ecosystems remains uncertain relative to small increases or decreases in the alkalinity of ocean habitats or the change in the quantities and ratios of dissolved oxygen, carbon dioxide, nitrate, phosphate, and silica [52]. Coral reefs, phytoplankton, and other ocean organisms, for example, have been very adaptable over geologic time and extensive research strongly suggests that they adapt well, on a global scale, to long-term climatic changes and small associated chemical changes in the oceans [53]. So far, research indicates that some organisms benefit and some do not [54], as might be expected. Indeed, this interplay between losses and gains has occurred many times in the geologic past as nature has continuously adjusted to climatic changes much greater than the slow natural warming over the last 350 years. The Earth's vast layers of carbonate rocks derived from carbon fixing organisms, including ancient, now dead coral reefs, as well as deeply submerged coral reefs on existing sea mounts [55], show that the production and evolution of such organisms remains a continuous, if possibly, locally or regionally punctuated process.

In the face of the overwhelming dominance of the oceans on climate variability, it would appear foolish in the extreme to give up liberties and incomes to politicians in Washington and at the United Nations in the name of "doing something" about slow climate change.

The President, regulators, and Congress have chosen to try to push Americans along an extraordinarily dangerous path. That path includes unconstitutional usurpation of the rights of the people and the reserved powers of the States as well as economic stagnation. Current and future Congresses absolutely must get this right!

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34. CLIMATE (SUN) AND THE CONSTITUTION #7

Harrison H. Schmitt
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For Immediate Release (See Related Releases Nos. [10](#), [29](#), [30](#), [31](#), [32](#) & [33](#) of February 22, July 2, 14, 19, 23, and 26, 2010)

Former Senator Schmitt Summarizes the Sun's Central Role in Climate Change

Policy makers at the head of government in the United States and in many States want to believe, and to have others believe, that human use of fossil fuels accelerates natural global warming. They pursue this quest in order to impose ever greater and clearly unconstitutional control on the economy and personal liberty in the name of a hypothetically omnipotent and infallible government. There exists no true concern by the President or many in Congress about the true effects of climate change—only a poorly concealed, ideologically driven attempt to use conjured up threats of catastrophic consequences as a lever to gain more authoritarian control of society.

There has been a slow natural increase in global surface temperature of half a °C per 100 years (0.9 °F) over the last three and a half centuries [\[1\]](#). Observational climate data and objective interpretations of those data strongly indicate that nature, not human activity, exerts the primary influence on this current long term warming and on all global climate variations. Human influence through use of fossil fuels has been and remains minor if even detectable [\[2\]](#). Claims to the contrary only find support in highly questionable climate models that fail repeatedly when tested against the reality of nature. What, then, stimulates historically and

geologically observed, sometimes slow and sometimes radical, changes in climate?

The primary alternative hypothesis to human-caused global warming is natural climate change driven by the variations in the activity of the Sun [\[3\]](#). Unfortunately, the “human-caused global warming” or “carbon dioxide forcing” hypothesis has become embedded in the minds of otherwise strong teams of observational scientists and their publication outlets. They cannot entertain any other alternative to enhance and amplify variations in the natural heating of the Earth as a result of solar influences [\[4\]](#)—nor can they prove their own hypothesis of human-caused global warming [\[5\]](#).

As many scientists have documented, the position and orientation of the Earth in its orbit around the sun, and the Sun's variable influence and activity, determine weather and climate [\[6\]](#). Seasons vary because of changing solar energy input in annual response to the varying orientation of Earth's Northern and Southern Hemispheres. Indeed, the Earth's 23° inclination to the rays from the Sun and its annual orbit around that star guarantee large seasonal changes away from the equator. Further, variations in solar radiation received by the Earth correlate with short-term variations in Earth's weather, based on variations in the slow move-

ment of loops called “Rossby waves” [7] in atmospheric jet streams [8].

Observations by astronomers over the centuries, as well as studies of tree rings [9], stalagmite layers [10], ice cores [11], sea sediment cores [12], and other pre-historic and geological records [13], have defined a normally present 11-year sunspot cycle superposed on a number of longer climate cycles [14]. Much modern research documents that this sunspot cycle also correlates with variations in various natural phenomena, including stratospheric winds [15] and ozone production [16], geomagnetic storms [17], cosmic ray flux [18], ionosphere-troposphere interactions [19], and the global electrical circuit that exists between the ionosphere and the Earth’s surface [20].

Further, correlations of records of seasonal changes, solar activity cycles, and local and regional rainfall oscillations all confirm that, through some means, solar activity correlates with changes in weather and climate [21]. The solar interplanetary magnetic field, whose polarity varies every 22 years or twice the sunspot cycle, may play an additional role as its strength varies directly with increases and decreases in numbers of sunspots [22]. Although their basic data collection appears to be useful, some researchers attribute increased cosmogenic nuclide production in the atmosphere to increased solar activity in support of models of El Niño conditions [23], whereas, “increased solar activity” actually correlates with decreased cosmogenic nuclide production. Solar maxima correspond with increased solar magnetic field strength, decreased cosmic ray interaction with the atmosphere, less cloud formation, and warmer terrestrial conditions [24].

As a further natural demonstration of the importance of the Sun in determining cli-

mate variation, the well-documented solar shielding effects of atmospheric ash and aerosols from volcanic eruptions document the tie between solar irradiance and at least short-term climate swings. Particularly illustrative historically have been eruptions such as Huaynaputina (1600) [25], Tambora (1815) [26], Krakatoa (1883) [27], and Pinatubo (1991) [28].

More broadly, geological and planetary observations show that major perturbations in climate relate to the position and orientation of the Earth in its orbit around the Sun. For example, as Serbian mathematician Milutin Milankovic pointed out in 1941 [29], and confirmed by many others since [30], initiation of the major ice ages on Earth correlate with a 23,000-year precession cycle [31], a 41,000-year obliquity cycle [32], and a 100,000-year eccentricity cycle [33] in the position of the Earth relative to the Sun. Cyclic global temperature variations measured in oxygen isotope ratios that correlate with the growth of ice sheets and biogeochemical responses closely reflect the 23,000-year precession cycle [34]. Also, the dynamics of the East African Equatorial monsoon appear related to a half-precession cycle [35]. In addition, the 41,000-year obliquity cycle shows strongly in North American marine depositional records [36].

Climate cycles related to internal solar activity are superposed on long-term orbital cycles. For example, the Medieval Warm Period (800-1300) and the Little Ice Age (1400-1900) correlate, respectively, with very active and very passive periods of recorded sunspot activity [37]. As a fairly recent example of solar influence on climate, the Little Ice Age occurred during a 500-year long sequence of three deep and prolonged reductions in sunspot frequency [38]. The coldest temperatures came during the

last of these minima, a 70-year period of exceptionally few sunspots (the Maunder Minimum) [39]. The Medieval Warm Period, (when the Vikings colonized Greenland as glaciers retreated and farmers could at least survive there) [40] also correlates with repeated, multi-century long intervals of high sunspot frequency [41]. Since the end of the early 1900s, peak values in sunspot activity rose steadily until 1960, leveling off at higher than normal values until apparently starting to fall about 2000 [42].

The 11-year sunspot cycle repetitions are superposed on a number of long-term cycles of past highs and lows in solar activity. For example, the Gleissberg cycle has imprecisely defined periods of 90 ± 30 years in length [43]. More energetic sunspot activity in the Gleissberg cycle may correlate with temporary decades of warming, such as in the 1930s and 1990s with the reverse being true in the 1810s and 1910s. Analyses of tree rings, lake levels, cave deposits, tree ring recorded variations in cosmic ray-produced isotopes (^{14}C and ^{10}Be) [44], and oxygen isotope ratios record what appear to be other long period solar cycles, specifically, 2400, 1500, 200 years, as well as the Gleissberg cycle [45]. Clearly, cycles of activity in a variable sun have strongly affected the Earth's climate.

Many advocates of human-caused global warming agree that solar cycles show correlations with regional climate variations [46]; but, absent a proven amplification mechanism to enhance small solar energy (irradiance) variations, they reject nature in favor of human fossil fuel burning as an explanation for warming during the last 100 years. These reviews by solar influence skeptics all document broadly accepted relationships of weather and climate with many different repetition cycles in solar activity [47], ranging from the 11-year sunspot cycle [48] to the

long-term Milankovic orbital repetitions discussed above.

Specifically with respect to the last 120 years, the correlation of measured solar energy input variations with global surface temperature and sea surface temperature is very strong [49]. The statistical correlation of solar irradiance with air temperature has been about 79% [50]. In contrast, during the last 50 years, the correlation of measured carbon dioxide increases with global surface temperature has been only about 22%. This directly contradicts the assumption that carbon dioxide has had a large influence on climate in the last 50 years [51].

Since the end of the last Ice Age 11,000 years ago, the increase in total energy from the Sun has been about 0.6 watts per square meter [52], an increase of less than 0.05% over an average total of about 1367 watts per square meter (equivalent to about 14 100-watt light bulbs per square yard). On shorter time scales, total variations reach about 3 watts per square meter, or 0.22% from the average [53]. Considering the actual amount of possible atmospheric heating (30% of incoming solar energy is reflected to space), this variation results in a third to a half a °C (0.6 to 0.9 °F) global temperature change, up or down, over seven years, that is, a half sunspot cycle [54].

Various natural mechanisms for water vapor feedback and visible, infrared, and UV light reflection, adsorption, emission determine the net direct solar heating or radiative forcing effect on the Earth [55]. Global atmospheric circulation moderates the *short-term* solar energy inputs, particularly by upward convection of oceanic heat and water vapor in the large scale equatorial Hadley Cells that span latitudes from 30°S to 30°N [56]. Ocean circulation overall

moderates the *long-term* transfer of solar energy around the globe [57].

Evidence for the existence of a means for amplifying solar energy-solar magnetic field interactions with Earth comes from the oceans. Determination of the total contribution of the oceans to heating of the atmosphere, using three independent observational measures of oceanic heat flux, shows that the oceans' contribution to heating to be five to seven times larger than variations in total solar energy input [58] indicated the existence of a means for amplification.

Additional support that an amplification mechanism exists comes from recent observational data on variations in stratospheric water vapor concentrations over three decades. These data suggest that decreases in water vapor have contributed to amplified sea surface cooling since 2000 while increases between 1980 and 2000 accentuated surface warming [59]. This relationship since 2000 may correspond with stratospheric cooling and lower water retention due to lower than average solar energy input.

Climate change driven by the Sun constitutes a strongly competitive, purely scientific alternative to the climate modeling-political hypothesis of human-caused global warming advocated by climate modelers and their acolytes in the science, media, and

political establishments. Solar influence ranges from significant but random solar flares and mass ejections affecting the thermosphere and jet stream tracks [60], to the 11-year sunspot cycle [61], to the 22-year magnetic polarity cycle, up to the long-term Milankovic orbital repetitions discussed above. The cold winters in the northern United States and Europe coincide with a relatively prolonged reduction in sunspot activity below even the norm for a minimum in the 11-year cycle [62].

Actual observations show that climate varies almost entirely in response to natural forces and that human burning of fossil fuels has had negligible effect over the last 100 years [63]. Let us hope that State and national policy makers taking office in 2011 and in the future will understand the facts about natural climate change, and the lack of evidence of a significant human influence on change, before taking enormous constitutional and economic risks— and before liberty and incomes suffer further erosion.

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35. SCIENCE POLICY AND THE CONSTITUTION

Harrison H. Schmitt
September 1, 2010

For Immediate Release

Former Senator Schmitt Cites Strong Constitutional Justification for Selected Federally Funded Research

The Founders understood the importance of science and technology in the long-term future of the United States. Without science and engineering advancement, in the face of advancement by others, America could not compete with our ideological and economic challengers. Imagine our world if Nazi Germany had atomic weapons or the former Soviet Union had developed nuclear submarines or had reached the Moon before America.

The Founders demonstrated their understanding of the critical role of individual creativity in American progress by specifically delegating constitutional power to Congress “To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.” (Article I, Section 8, Clause 8). The economic and personal incentives for Americans to invent and publish have grown from this remarkable clairvoyance.

The Founders did not intend for the “Science and useful Arts” Clause alone to give broad constitutional justification for federal funding of scientific and technology research. Clearly, the Founders only meant for this Clause to apply to the fruits of research activities by individuals. Federal pro-

tection of intellectual property by copyright and patent law flows from this constitutional power.

Scientific and technological advancement funded by the Federal Government has a strong constitutional foundation in the Preamble’s mandated promotion of the “common Defence and general Welfare.” Specifically, the Congress has enumerated powers in this regard in Article I, Section 8. Implementation of those powers logically requires federal involvement in science and engineering research, as follows:

- Clause 5 – fixing of “the Standard of Weights and Measures.”
- Clause 6 – detection and prevention “of counterfeiting.”
- Clause 7 – establishment and implied improvement of “post Roads” and, by logical extension, more modern means of delivering communications.
- Clause 8 – evaluation of “Discoveries” in “Science and the useful Arts” for the purpose of “securing...exclusive rights” for “Inventors.”
- Clause 12 and 13 – “support” of “Armies” and maintenance of “a Navy” and, by logical extension, fu-

ture forces necessary to the “common Defence.”

- Clause 15 and 16 – support of the “Militia” and their use to “repel Invasions.”

Clause 18 of Section 8 further gives Congress the power “to make all laws necessary and proper for carrying into Execution the *foregoing* Powers, and *all other Powers vested by this Constitution* in the Government of the United States, or in any Department or Officer thereof.” It should be noted by the added emphasis in bold that this Clause limits Congress to only the execution of the Government’s constitutionally *enumerated* powers.

Relative particularly to national security, clear Article I constitutional support therefore exists for federal sponsorship, directly or indirectly, of science and technology research that applies to the following:

- Weapons of all kinds that can effectively support the functions of the armed forces.
- Natural, agricultural, and other resources required for national security.
- Military logistics technologies and transportation systems, including national highways, waterways, rail systems, and aeronautics and space systems.
- Nationally critical energy systems and the basic sciences that underlie such systems the development of which lies beyond the capabilities of the people acting in their private capacities.
- Potential future military technologies such as space and missile defense, external threat sensing, cyber attack, and so forth.

- National border protection and enforcement.
- Medical research applicable to the maintenance of a healthy population from which soldiers are drawn as required and to the treatment of wounded soldiers and veterans.
- Climate and weather as they impact national security.

Under Article II, the Executive also has enumerated powers that require support from science and engineering research but which require budgetary concurrence by the Congress and, of course, congressional approval of necessary levels of supporting taxation or debt. Article II, Section 2, Presidential powers include:

- Clause 1 – acting as “Commander in Chief of the Army and Navy...and of the Militia...when called into the actual Service of the United States...”
- Clause 2 – negotiating and making “Treaties” on which the Congress must provide “advice and consent.”

Also under Clause 2 of Article II, Section 2, Presidents have the power to appoint “...by and with Advice and Consent of the Senate...all other Officers of the United States...whose Appointments...shall be established by Law...” including individuals responsible for federally supported research in science and technology. Any appointments with significant executive powers not submitted to the Senate for confirmation, such as President Obama’s “czars” are clearly unconstitutional.

Although the Congress, under Article I, Section 8, Clause 18, can legislate both responsibilities and constraints on the execution of the President’s Article II power of Appointments, Article I limits Congress to its own enumerated powers. Constraining

Congress even further, the Founders did not provide in Clause 18 for Congress to go beyond enumerated powers in defining the specific responsibilities of Presidential Appointments “established by law”. Science and technology research necessary to support the authorized functions of Departments and Agencies, therefore, must adhere to the limits of the enumerated powers of Congress; that is, it would be unconstitutional for Presidential appointees to be given budgetary authority to undertake activities that Article I does not state as being within the power of Congress to authorize or fund.

How, then, can “Appointments” in the Executive be given clear authority to carry out their constitutional responsibilities? First of all, through the Oath of Office, the President gains significant latitude in directing some such officers to assist him to “preserve, protect and defend the Constitution of the United States.” This constitutional discretion expands further in the Article II, Section 2, Clause 1, designation of the President as “Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into actual Service of the United States...” Departments such as Defense, Homeland Security, and Justice, as well as the Intelligence Agencies, can be managed directly by the President, but only within the bounds of the Bill of Rights and other Constitutional Amendments. In this, the President only needs Congressional concurrence on overall budgets.

Budget concurrence creates critical balance of power limitations on the President as Commander in Chief but cannot, constitutionally, be used to prevent Presidents or the Congress from providing for the “common Defence” in any significant way. Both entities share this mandated function. For not carrying out that mandate, Presidents can be

impeached and Members of Congress can be removed in their next election cycle.

Article II, Section 2, Clause 1, further expands Presidential Executive power by stating “he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective offices...” This language indicates that the Founders expected Presidents to exercise significant control over the activities of all Executive Departments and, by extension, future Agencies that might be created by law.

The fact that the Constitution does not define the functions of any Executive Department, outside those implicit in enumerated powers, indicates an intent that this definition would be left to the interplay between the Congress and the Office of the President. The need for the Executive to deal with national defense and matters of state, treasury, commerce, law enforcement, and postal service derives from Articles I and II. The Founders, on the other hand, intentionally created what they hoped would be a balancing tension between the Executive and the Congress through Presidential executive power being moderated by Congress’ power over the purse and specific enumerated legislative powers.

The President, with funding concurrence by the Congress, therefore has significant discretion in assigning science and technology research duties to federal Departments and Agencies so long as Congress can constitutionally fund their implementation. Development of weapons and intelligence gathering systems and systems that support the armed forces overall are obvious examples of the exercise of this constitutional discretion. Persuasive constitutional arguments also can be made for federal support

of science and technology research in medicine, agriculture, energy, and natural resources based on the specific applicability to national security of research projects in these arenas. An increasingly healthy population and the obvious need for indigenous supplies of food, energy, and raw materials provide adequate justification for most of the research activities of related federal Departments. These arguments find strong support in history and in consideration of possible future national security threats and the need for improved and more diverse means of meeting those threats.

The Constitution, on the other hand, does not empower the Congress to provide funding for, nor can the President direct, research that does not have specific applicability to powers enumerated in Articles I or II. This fact calls into question the constitutionality of research on societal, economic, cultural, demographic, and educational issues that have no direct relationship to national security or constitutionally required congressional redistricting and that could be carried out through privately funded institutions, associations, cooperative State initiatives, and businesses rather than by the federal government. The 10th Amendment relegates decisions on the conduct of such soft research to the people or the States.

Constitutional rationale for “big” science and technology projects that have costs, time commitments, and national security implications and lie beyond those addressable by the private sector alone lies in their tangible contributions to the implementation of the Article I powers of the Congress and the Article II powers of the President. Since the nation’s founding, federally supported or managed big science and engineering efforts have contributed to national defense or to treaty enforcement. Notably, such projects include canals, locks, dams, and levees be-

ginning in the early 1800s; agricultural research through Land Grant academic institutions created in 1860s and 1890s; the Transcontinental Railroad in the late 1860s; construction of the Panama Canal at the turn of the 20th Century; aeronautical research that began early in the 1910s; continuously upgraded defense and reconnaissance systems since the 1940s; the Manhattan Project of the 1940s; development of a Nuclear Navy and related power systems, communication satellites, and the Interstate Highway System in the 1950s; and the Apollo Moon-landing Program of the 1960s.

Even though strong constitutional support exists for significant federal funding of science and engineering research, the justification for such support becomes blurred relative to big and small, pure science projects exploring the edges of our understanding of nature. Although difficult to quantify, their constitutional rationale for selective support of pure scientific research lies primarily in the stimulation of educational initiatives that train the scientists and engineers that ultimately serve more direct constitutional functions, particularly national security.

Unfortunately, the once bright future for both federally and privately funded science and technology research has dimmed in the United States. Mismanagement of federal projects is endemic. A federal attack on private academic and research institutions has commenced through unconstitutional regulatory interference. Further, unless the next Congress and the next President contain and reduce the national debt and the cost and reach of both entitlements and unnecessary regulations, remaining taxpayers will have little money left to fund future research no matter how important and constitutional.

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36. NATURAL RIGHTS AND THE 9TH AMENDMENT

Harrison H. Schmitt
September 30, 2010

For Immediate Release

Former Senator Schmitt Highlights the 9th Amendment's Protection of Natural Rights

The Nation's Founders recognized that a formal Constitution and Bill of Rights could not fully protect the natural rights of Americans that arise from their existence as free human beings. They therefore included a specific guarantee of those natural rights as the Bill of Rights' 9th Amendment.

The 9th Amendment states, "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." The "certain rights" referenced in this Amendment, clearly include those specified in other Amendments in the Bill of Rights. Those "others retained by the people" embrace all naturally encompassing, or intensive, human rights of a free people, for example, the "unalienable rights of life, liberty, and the pursuit of happiness" identified by the Declaration of Independence. Other natural rights include free association, education, travel, work, communication, thought, privacy, property, and defense of self and family, in other words, intensive rights that inherently belong to all humans.

Activities like healthcare that relate only to the voluntary exercise of several fundamental natural rights clearly cannot be included as a stand-alone "right" as often advocated. Additionally, the 2010 healthcare law tramples the natural rights to privacy

and free association protected by the 9th Amendment by inserting federal government review and control between a private patient and his or her doctor. Even worse, the mandate that all citizens have health insurance violates the fundamental right to liberty, that is, free choice in how life is to be lived and happiness pursued.

Relative to the natural right to educate our children, the Founders gave us clear guidance in the Constitution by unequivocally *not* giving the federal government power over this parental function. This knowing limitation came in spite of the Founder's deeply held and clearly expressed belief in education's fundamental importance to a democratic Republic. First of all, no mention of education exists in the Constitution among the explicit general welfare powers of Congress in Article I. Then, by way of the 9th Amendment, the Founders left the natural right of educating their children with the people.

The current assault on the natural right of communication has taken the form of political advocacy for the "fairness doctrine" by which the federal government would force those providing commercial access to the public airwaves to allocate equal time for opposing political, editorial, and, presumably, moral views. Additionally, the

election law prohibits certain forms of political speech immediately prior to elections. Clearly, these intrusions are unconstitutional under both the 9th Amendment as well as the free political speech provision of the 1st Amendment.

The right to travel has suffered massive restrictions in modern times, beginning with the federal government's unnecessary tax and regulatory burdens on interstate and international travel entities and interference in collective bargaining between employees and transportation entities. The most serious erosion of the right to travel, however, has taken place since the terrorist attacks of September 11, 2001. The federal government's politically motivated refusal to concentrate on profiling individuals that are potential terrorist threats, and instead restrict the travel freedoms of everyone, has not effectively dealt with existing threats but has added a new level of cost, a vast new federal police force and bureaucracy, and further federal restrictions on individual freedom.

In the arena of immigration control, Congressional proposals to impose national identification papers on all Americans as a condition for the exercise of the rights of travel or work, would look very much like the identification papers that came with Germany's disastrous adoption of national socialism in the 1920s. Clearly, such identification papers in America, particularly if they contain personal information such as identifying DNA, runs afoul of the rights of privacy, travel, and work guaranteed by the 9th Amendment.

The 9th Amendment's protection of the right to work has been usurped by government requirements for minimum wages, union shops, payment of a prevailing wage, prohibition of even managed use of public lands and resources, moratoria on energy

production, and many other unnecessary and politically motivated restrictions on earning a living. Arms-length wage negotiations between an employee and an employer have largely disappeared, to the great detriment of individuals and taxpayers, while common sense has deserted efforts to sustain our natural heritage as well as our economic independence.

Intimidation by media and academic institutions against political and religious thought as well as politically motivated laws that add "thought" penalties to alleged criminal activity have increasingly restricted this clear natural right. Absent factually verifiable confessions or motives, added criminal penalties for alleged "hate" or "racism" merely relate to what the government can persuade a jury the accused was thinking at the time of the crime. For example, murder is murder and assault is assault, and both are clear-cut crimes that should be prosecuted as such. No alleged thoughts of hate or racism change the heinous nature of these crimes and need not be considered in the judicial process. To do so begins to take us down that slippery slope toward making unpopular political thought a crime.

The requirement that Americans have Social Security Numbers to obtain certain government benefits and the broad use of that number as a means of commercial and personal identification violate the implicit right to privacy under the 9th Amendment. Contrary even to the word of the enabling legislation, the private sector as well as all levels of government demand Social Security numbers for routine identification. In addition, identity theft and identity fraud erode the value of using such numbers. Obviously, the best way to eliminate these privacy intrusions would be to substitute universal and privately managed investment-based retirement accounts, verified in filings of federal

tax returns, and let more certain means of identification be use for other purposes. This should be the ultimate goal of retirement and health security reform as well as of privacy and identity protection.

Government has steadily sought to restrict the natural right to legally acquire and hold property. It acts through oppressive property and estate taxes, unconstitutional eminent domain assertions, acquisitive environmental regulations, and excessive intrusion into business and shareholder relations to name only a few worsening issues. In addition to the absence of any explicit constitutional authority for placing unusual burdens on property rights and the right for equal protection of the law arising from the 5th and 14th Amendments, the 9th Amendment must be asserted as a further defense of property as a natural right.

Finally, the right of defense of self and family has been under continuous attack in recent decades. That attack includes lawsuits by criminals against home owners protecting their family and property as well as continued assaults against the 2nd Amendment's explicit right of citizens to bear arms. The 9th Amendment's natural right of defense of self and family should be included in the

defense of the explicit 2nd Amendment right.

By virtue of the 10th Amendment, the powers for addressing and cooperating in the exercise of natural rights under the 9th Amendment are among those "not delegated to the United States by the Constitution" and "are reserved to the States, respectively, or to the people." Specifically, power over association, education, travel, work, communication, thought, privacy, property, and defense of self and family are "***not delegated*** to the United States," directly or indirectly, by any provisions of the Constitution. If they so desire, the exercise of all natural rights lies with the people who may organize at local or state levels to enhance the benefits of such rights. The election of 2010 begins the process of retrieving the full spectrum of 9th Amendment rights lost to the federal government over the last Century and particularly over the last decade.

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37. CLIMATE (COSMIC RAYS) AND THE CONSTITUTION #8

Harrison H. Schmitt
October 16, 2010

For Immediate Release (See Related Releases Nos. [10](#), [29](#), [30](#), [31](#), [32](#), [33](#) & [34](#) of February 22, July 2, 14, 19, 23, 26 and August 10, 2010)

Former Senator Schmitt Summarizes the Effects of Cosmic Rays on Climate Change

Climate change driven by the sun, constitutes a strongly competitive hypothesis to the climate modeling-political hypothesis of human-caused global warming. As many scientists have documented, the position and orientation of the Earth in its orbit around the sun and the sun's variable activity determine weather and climate [\[1\]](#). As part of this process, oceans store enormous amounts of solar energy, dwarfing by a factor of 10 the energy stored in the atmosphere. Ocean currents create climate variations over vast regions by transferring their energy around the globe over decades and centuries through a system of interconnected currents and current oscillations [\[2\]](#).

Increasing evidence suggests that a mechanism exists for strong amplification of relatively small solar variations of only $\pm 0.1\%$. That mechanism lies within the interaction of changes in the ionosphere, heating of the stratosphere, ozone production, ionization in the troposphere, concentrations of atmospheric water and other greenhouse gases, nucleation of reflective clouds, and variations in ionization effects and resistive heating within the global electric circuit [\[3\]](#). Obviously, this constitutes a very complex mix of interrelationships, not likely to be soon subject to predictive computer modeling.

The direct relationship of the strength of solar magnetic fields with the sunspot activity on the sun [\[4\]](#) may provide a large part of the amplification answer. Research by Henrik Svensmark of Denmark's Center for Sun-Climate Research and others indicates that the strength of solar magnetic fields influences the depth of penetration of cosmic rays entering the Earth's atmosphere [\[5\]](#). These cosmic rays consist largely of extremely high-energy, electrically charged hydrogen and helium nuclei that to some degree can be diverted from entering the solar system by sufficiently strong solar magnetic fields. Cosmic ray collisions with gases in the atmosphere also produce isotopes of Beryllium (^{10}Be) and Carbon (^{14}C) that in turn provide a measurable history of variations in cosmic ray intensity when taken up in tree rings and other annually layered materials [\[6\]](#).

The physical mechanism for a cosmic ray stimulation of low cloud formation appears to be increased ionization of aerosols and the resulting enhancement of water nucleation sites [\[7\]](#). Indeed, the increase in satellite measured global brightening since about 1992 probably relates to a steady increase in total global cloud cover [\[8\]](#). Periods of weak solar magnetic fields, known to correlate with low sunspot activity, allow

cosmic rays to penetrate more deeply into the lower atmosphere [9] where they ionize more gas molecules than average, thus seeding more cloud cover and increasing the reflection of solar energy back into space. The reverse occurs with periods of strong solar magnetic fields.

As cloud cover expands, more solar radiation reflects back into space, resulting in a net cooling of the atmosphere and increased snow accumulation, particularly in temperate and arctic regions. A current illustration of the cooling effect of decreased solar activity appears to be in the currently very quiet sun and the recent reversal of the slightly elevated warming trend of the 1970s through 1990s. How long this cooling trend will persist remains to be seen; however, Greenland glaciers have been advancing since 2006 [10] and snowy, cold winters have dominated weather news coverage from northern North America and Europe. In addition, 2009 Fall Arctic sea ice has returned to most of its 1979 levels of coverage [11].

Satellite observations of cloud cover, isotopic analysis of tree rings, ice cores and stalagmites, and historical analyses of solar activity support the hypothesis that cosmic rays can amplify solar variations. As to the fundamental nature of sunspot generation and corresponding strengthening of the interplanetary magnetic field, a strong positive correlation exists between small changes in solar radius and sunspot number [12] as well as with variations in magnetic fields at the surface of the Sun [13]; but a full understanding of these phenomena remains elusive.

Additional evidence of long-term variations in cosmic ray damage in meteorites, correlated with major ice ages on a 150 million year cycle of global cooling, strongly

suggest that such ice ages may result from (or be intensified by) the solar system's passage through the regions of high intensity cosmic ray sources in the spiral arms of the Milky Way Galaxy [14]. This potential galactic influence on cloud formation and colder climate matches the observation that long periods of very low sunspot activity, and an accompanying weakened solar magnetic field, correlate with the coldest periods within the of the Little Ice Age of 1400-1900 [15].

A significant test of the existence of significant solar amplification may occur over the next sunspot cycle (Cycle 24); the beginning of which was delayed at least two years and its slow onset continues to confound predictions [16]. This slow onset has been accompanied by a particularly large decline in ultraviolet radiation, a commensurate decline in stratospheric ozone, and solar activity apparently out of phase with radiative forcing of global temperature [17]. Given the recent research findings discussed above, the current prolongation of less solar irradiance, reduced solar magnetic field strength, and greater convective energy between the surface and stratosphere may combine to create increased cosmic ray induced cloud formation and cooling in middle latitudes and greater total energy of tropical hurricanes and cyclones originating in the tropics [18].

The north-south flow of material at the Sun's surface has been faster and more variable than normal during the approach to sunspot Cycle 24 and the current prolonged sunspot minimum—the quietest in 100 years [19]. This coincides as well with an anomalously low output of solar soft x-rays [20]. The strength of the resulting solar polar magnetic fields during the drop off from the sunspot maximum in 2000-2001 has been about half of normal and also may have re-

sulted in increased cosmic ray induced cloud formation since that maximum. That would coincide with evidence of relatively constant or decreasing global temperature since about 2000.

In addition to strong evidence that solar mediated cosmic ray flux can amplify variations in solar energy input, the theoretical potential also exists for a weakly varying solar heating or cooling signal to be amplified through “stochastic resonance,” that is, amplification by the addition of nature’s random weather-related background noise to an otherwise weak solar signal [21]. Such an addition could raise a solar heating signal over and above the background and could be further amplified by a non-linear system like ocean currents.

A further complication for those trying to model the future of climate change lies in the aforementioned global electric circuit. This circuit carries a net electric current of about one kilo-amp that flows from thunderstorms in the lower atmosphere (troposphere) into the ionosphere and magnetosphere and then closes with the Earth’s surface through atmospheric contact and lightning [22]. Convection in thunderstorms, solar wind interaction with the Earth’s magnetosphere, and tides in the atmosphere’s thermosphere (high temperature, ionized, very thin atmosphere above about 80 km) power the global electric circuit. Thunderstorms, particularly those in the equatorial Intertropical Convergence Zone,

appear to be the most important component this process. No indication exists that current global climate models adequately address any of these global natural phenomena.

What are the policy implications of this complicated natural science summarized in the Climate essays of this series? The unconstitutional regulatory responses in the name of controlling climate proposed by the Environmental Protection Agency, the Congressional Leadership, the President, and some State leaders must be resisted with the certainty that strong scientific research supports the hypothesis that climate is controlled by nature, not by human use of fossil fuels.

Using naturally warming climate as a false crisis, Government desires to regulate and tax the American economy without constitutional authority. In doing so, Government’s inherently arbitrary and capricious regulatory actions will reduce individual and collective liberty by raising the cost of living of all citizens and in clear violation of the natural, intensive rights guaranteed by the 9th Amendment.

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38. CONSERVATIVE CONGRESSIONAL AGENDA AND THE CONSTITUTION #1

Harrison H. Schmitt
November 3, 2010

For Immediate Release

Former Senator Schmitt Urges Conservative Leadership Pressure on Obama: Phase I – Economy and Healthcare

A Conservative revolution partially swept the United States' House of Representatives and United States' Senate clean of national socialist (16) leadership on November 2nd. Now, initial actions in the House will set the framework for the elections of 2012 and for a continued restoration and rejuvenation of the American Dream.

To keep the New American Revolution moving forward, a steady flow of House bills dealing with the economy and healthcare must flow to the Senate and the President. This legislation must demonstrate a permanent commitment to liberty, national economic strength, and the wellbeing of the electorate.

The Founders' intent in creating the Constitution and its Bill of Rights must guide drafting of new legislation. The bills should reverse the unconstitutional actions of the recent Congresses as well as block the continuation of an equally unconstitutional "rule by regulation" being imposed by the Obama Administration. Judicial precedents that do not follow the intent of the Constitution's provisions should not be allowed to prevent enactment of these legislative initiatives. Instead, the new Congress should force the reversal of any such unconstitutional precedents.

ECONOMY (6, 8): The first bill initiated in the House must make all existing tax rates permanent by removing the expiration provisions within the Economic Growth and Tax Relief Reconciliation Act of 2001. This new "Financial Certainty Act" will be the fastest means of jump-starting business confidence, non-federal job creation, and the entrepreneurial driving forces of the economy. Such a bill might even get some endangered Democrats' support in the upcoming 2010 Lame Duck Session. No more urgent legislative action exists at this time.

A critical provision of the Financial Certainty Act should be that federal revenues in FY2011 and subsequent years, above those received in FY2010, shall be applied to retirement of the national debt. Retirement of this debt constitutes a national security issue as well as an economic priority. Associated with this debt retirement provision should be passage of a FY2011 budget and Appropriations Bills that do not fund unconstitutional or unwise provisions of past legislation such as Obamacare and the so-called Wall Street Reform and Consumer Protection Act. Any unobligated funds in the 2008 Troubled Assets Relief Program (TARP) should be rescinded. Further, any federal equity holdings in businesses or financial institutions should be liquidated, as they have no constitutional foundation in law.

To create a balanced budget for FY2012 and subsequent years, the FY2011 Budget and Appropriations Bills should include the necessary funding for the termination of Fannie Mae and Freddie Mac, the Department of Education, and other federal agencies that have no constitutional justifications for their existence.

This path to constitutional economic reform clearly will require fiscal and policy adjustments by the States and local political jurisdictions. Past acceptance of federal funds in many areas that had been sole State and local responsibility under the 10th Amendment has distorted budgets and priorities at the State and local levels. Adjustment to constitutional governance must be rapid; but such adjustment cannot occur over night. Congress should hold immediate hearings on how non-federal jurisdictions will adapt to constitutional reform, how much time is actually needed for such adaptation, and what constitutional means exist to assist States in nation-wide transition back to a truly Federal System for the United States. Clearly, sustained economic growth will assist greatly in easing this transition, but other steps may be required, such as removal of unconstitutional or inappropriate federal restrictions on land use and resource and business development.

Additionally, the Financial Certainty Act should create a Legislative Veto process^[*] relative to perpetuation of any Federal Reserve decision related to monetary policy. The Legislative Veto should apply to any policy that stays in effect for more than one year and is deemed, by Resolution of either the House or Senate, to create sustained monetary inflation or deflation of more than one percent, annually.

Simultaneously with passage of the Financial Certainty Act, work on full constitu-

tional reform of tax law should be initiated immediately with hearings, legislative drafting, and a nationwide informational campaign on the economic and employment benefits of such reform. All forms of taxation consistent with the 5th and 14th Amendments' "equal protection" provisions and with other provisions of the Constitution should be evaluated.

HEALTHCARE (3, 9, 17): The second bill out of the House, also related to restoring confidence in the economy, should fully repeal "Obamacare", that is, the Patient Protection and Affordable Care Act of 2010 and its companion Health Care and Education Reconciliation Act. Other than in relation to the "common Defence", no provision exists in the Constitution supporting passage or implementation of federal laws related to healthcare, and, for this reason alone, Obamacare should be repealed. In addition, Obamacare is a growing economic and health disaster for Americans as well as a giant step on the road to national socialism (16) and total abrogation of the Constitution.

Passage of an overall bill to repeal Obamacare should be followed immediately by bills of repeal related to specific, unconstitutional sections of this law, including but not limited to the following:

Insurance Mandates: Congress has no specific or general welfare power under Article I, Section 8, to mandate that all Americans use their incomes to purchase anything, much less health insurance, and to fine them if they do not make that purchase. Nor does the power of Congress to tax under Clause 1 or to regulate interstate commerce under Clause 3 provide constitutional justification for federally mandated insurance. Fining or taxing those who do not wish to purchase insurance deprives them of equal protection under the 5th and 14th Amendments. Fur-

ther, such a mandate would confiscate private property (money) without just compensation as also required under the 5th Amendment.

Criminalization of Non-Compliance: Criminalization of both an individual's lack of health insurance and the purchase of health insurance above a government imposed limit violates the 6th Amendment without providing for the extensive and far-reaching protections required for "all criminal prosecutions."

Prosecutions: The new law now requires that private contracts between patient and insurer contain specific mandated coverage, violating the 4th Amendment right of the people "to be secure in their... papers...against unreasonable searches and seizures..." Without a constitutionally valid warrant, the government has no power to access what is in a contract (paper or oral) between an American and his or her insurer.

Tax Increases: New sales taxes disguised as excise taxes, will be imposed on targeted producers, sellers, real estate and bank transactions, individuals, and families to subsidize insurance for others and to cover the vast administrative costs of government healthcare bureaucracies. The Obamacare provision to tax "net investment income" at 3.8% will be particularly detrimental to the economy and many individuals. These taxes will be passed on to some Americans, but not all, as *defacto* sales taxes, violating equal protection under the 5th and 14th Amendments. In addition, nowhere does there exist constitutional justification for a federal sales tax on visits to tanning salons or anywhere else. Further, the law applies an inverse sales tax if an individual or a company does ***not*** buy health insurance for themselves or their employees. This inverse sales tax effectively constitutes a fine

and runs afoul of the "due process" clause of the 5th Amendment, as the new law provides no administrative or judicial appeal process.

Free Association: The new law tramples the natural rights to privacy and free association protected by the 9th Amendment (36) by inserting government review and control between a private patient and his or her doctor. On the other hand, access to healthcare itself clearly would not be included as a 9th Amendment right as such initiatives relate only to voluntary human activity in support of the true natural right, that is, the right to life.

Mandated State Benefit Exchanges: The new law requires States to create and regulate health benefit exchanges to oversee insurers' allocation of benefits to subsidized patients. Absent State action, the federal government would set up and manage an exchange for the State. This coercive mandate on the States violates both the nature of the Federal System of government envisioned by the Founders and embodied in the Constitution and the specific rights reserved to the States and the people by the 10th Amendment.

Insurance Companies as Utilities: Directly and indirectly, Obamacare herds insurance companies into a stable of public utilities. In so doing, Congress not only illogically assumed that insurance constitutes a natural monopoly, like a local power company, but fails to provide for a market rate of return to the companies and their shareholders. Insurers' administrative costs would be limited by law rather than allowing the recovery of actual costs. At the same time, the government would establish minimum standards of care over which the "insurance utility" would have little control as to costs, administrative or otherwise. In addition to

the economic lunacy of this proposal, its unconstitutionality lies in the 5th Amendment's right of shareholders not to have "private property be taken for public use without just compensation."

Limitation on Drug and Device Costs:

The new law directly and indirectly mandates limitations on the costs of medical drugs and devices. Without the ability to recover the costs of development, testing, and regulatory approval, drug and device companies will be unable to continue vigorous research and development efforts that potentially could benefit everyone. Congress has no enumerated constitutional power to impose restrictions of this nature on selected private entities, either in Article I or under the equal protection mandate of the 5th and 14th Amendments.

Civilian Security Force: One of the Obamacare legislation's most insidious Trojan Horses is the creation of a "Nation Health Service Force", including Ready Reserves, under the control of the President. President Obama has referred publicly to this Force as a "national civilian security force" that is "just as powerful, just as strong, just as well funded" as the existing United States Military. The authorization of this internal military force is blatantly unconstitutional as Article I, Section 8, empowers Congress, as related to the "common Defence", to provide only for the Army, Navy, and State managed Militia. Nowhere does the Constitution, directly or indirectly, give Congress the power to create an internal, personal army and reserves. The president's new "force" conjures memories of nightmares that previously occurred in totalitarian States. To deal with health emergencies, the alleged purpose of the new "force", the Center for Disease Control should be authorized to develop a system for the identification and rapid mobilization of volunteer health

and law enforcement personnel, assisted by State Militias, as has been the emergency response mechanism throughout American history.

Competitive Interstate offering of Insurance Policies: On the positive side, Congress should require States to allow insurance companies to compete commercially across state lines. Regulation of this form of interstate commerce under Clause 3 of Section 8, Article II, must be the restrained regulation of fair competition in insurance "commerce" and not include unconstitutional mandates on the insured or the imposition of what insurance must be offered. The "invisible hand" of consumer choice will control insurance offerings very well.

While coordinating with the House Leadership on its own immediate legislative actions on the above urgent matters, the Senate Conservative Leadership's first actions should be to immediately hold confirmation hearings on those Presidential appointments (the so-called "Czars") that have not been confirmed but have been given broad executive responsibilities in the Government. Such Advise and Consent confirmation of appointees is required under the Article II, Section 2, Clause 2, Appointments power given to the President. The same Clause 2 requires that Appointments not provided for in the Constitution or vested by law in the President alone "...shall be established by Law..." Clearly, the President has acted in direct violation of the Constitution in his highhanded appointment of the Czars without Congressional legislative sanction or Senate confirmation.

The pressure to force the remaining socialist-leaning members of Congress as well as the President to repeatedly take formal and public stands on major constitutional

issues should be unrelenting in the run-up to the 2012 and subsequent elections. This constitutes an essential part of accelerating the return to government “of the people, by the people, and for the people”.

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Endnote

- [*] The Founders clearly intended by Clause 18 of Article I, Section 8, that enactment of federal laws to be the responsibility of the Congress and not passed on to the Executive Branch through generalized regulatory authority. In order to return to the Founders’ intent, Congress should create a One House Legislative Veto process relative to any decision, order, or regulation promulgated by the Executive Branch. That process of regulation review and potential disapproval should begin with 20 percent or more of the members of either House petitioning to discharge an introduced Resolution of Disapproval from the relevant Committee or Committees and move its consideration to the floor of the initiating House. If the Resolution passes either House, the Congress can maintain constitutional control of this On House Legislative Veto process by a sequence of one House passage of a Resolution of Disapproval, followed by the other House’s opportunity to pass a Resolution of Disapproval of the first House’s action. This sequence avoids the constitutional requirement for the President to sign any joint action by the House and Senate (Article I, Section 7, Clause 3). Should an Agency or Department refuse to honor the Legislative Veto of a specific regulation, the Congress should use the Appropriations Bill to rescind funding for its enforcement.

39. CONSERVATIVE CONGRESSIONAL AGENDA AND THE CONSTITUTION #2

Harrison H. Schmitt
November 4, 2010

For Immediate Release (See Release No. 38 of November 3, 2010)

Former Senator Schmitt Urges Conservative Leadership Pressure on Obama: Phase II – Education, Regulation, Health Security

EDUCATION (13,14,15): Long term, no more important obligation exists for the new Congress than taking steps to rejuvenate and advance the education of young Americans. The first and only bill related to education that the new House Leadership should send to the Senate, however, totally removes the federal government from unconstitutional influence in the peoples' and States' exercise of this natural right (36) guaranteed to the people by the 9th and 10th Amendments. Although the elimination of the Department of Education constitutes a necessary first step, the direct and indirect political and administrative influences of the federal government on K-12 and advance education should all be removed.

The only, but extremely important, constitutional role for the federal government in education lies in its relation to national defense. As demonstrated in World War II and in the Apollo era, support for higher education (35) in fields directly relevant to skills needed for defense systems development and use falls under the federal government's constitutional obligation to provide for the "common Defence". This obligation, however, does not give the federal government the constitutional authority to control administrative policies of either State or private institutions of higher learning.

Indirectly, support of universities and colleges for science, technology, engineering, and mathematics (STEM) education for defense purposes produces a "pull" on the largely failed State K-12 education systems to improve preparation of students in these fields as well as in the development of reasoning, language, and communication skills.

Representatives and Senators in the Congress can influence improvement in the States' exercise of the educational responsibilities given to them by the people through taking personal responsibility to encourage their home State officials to support parental involvement in their children's education. The States' advancement of charter schools and voucher systems, merit pay for teachers, minimal administrative overhead initiatives, and private school contributions and investment, encouraged by all public figures, will bring American education to the high level required by our representative democracy as well as by a highly competitive world economy.

GENERAL REGULATION: Clause 18 of Section 8, Article I, of the Constitution empowers Congress to make laws "necessary and proper" for executing its enumerated powers, but only those powers. This congressional authority has morphed into a vast array of administrative regulations that intrude into the lives of Americans far beyond the constitutional authority of the

Congress and the Executive. The new House Leadership must quickly legislate a staggered, four year schedule of sunsets for all administrative regulations issued by the Executive Branch that do not specifically adhere to the dictate of Clause 18. Matched to this schedule should be a sequence of relevant Subcommittee reviews of regulations to determine whether the Congress should or should not confirm them in legislative law.

The Founders clearly intended by the language of Article I that enactment of federal laws be the responsibility of the Congress and not passed on to the Executive Branch through generalized regulatory authority. In order to return to the Founders' intent, Congress should create a One House Legislative Veto process relative to any decision, order, or regulation promulgated by the Executive Branch. That process of regulation review and potential disapproval should begin with at least 20 percent of the members of either House petitioning to discharge an introduced Resolution of Disapproval from the relevant Committee and move its consideration to the floor of the initiating House once the Committee has had 60 days to act. The 20 percent requirement limits the possibility of tying up the business of the House or Senate with frivolous or personal use of a Resolution of Disapproval.

If a Resolution of Disapproval passes either House, the Congress can maintain constitutional control of its Legislative Veto process by a sequence of one House passage of a Resolution of Disapproval, followed by the other House's opportunity to pass a Resolution of Disapproval of the first House's action. This sequence avoids the constitutional requirement for the President to sign any joint action by the House and Senate (Article I, Section 7, Clause 3). Should an Agency or Department refuse to honor the Legislative Veto of a specific regulation, the

Congress should hold that Agency or Department in contempt of Congress or use a relevant Appropriations Bill to rescind funding for enforcement of the offending regulation.

Even in the case of regulations that may have a constitutional legislative foundation, provided Congress exercises vigorous oversight, uncertainty as to how to proceed with municipal, state, and business projects rules the day. This costly uncertainty results from delays in promulgation and interpretation, administrative and judicial stagnation, unrealistic judicial and bureaucratic desires for consensus between protagonists, and a lack of confidence in the permanence of a decision when and if it occurs. In addition to providing a sunset schedule on all regulatory authorizations, Congress must set legally enforceable schedules for administrative action and judicial adjudication of regulatory conflicts. Innovation, employment, and local economic growth in agriculture, construction, resource development, and recreation all suffer from both the imposition of unconstitutional restrictions and regulatory decision-making paralysis.

FINANCIAL REGULATION: The so-called Wall Street Reform and Consumer Protection Act of 2010 passed the Congress as a vindictive cover of its own complicity in the economic collapse of 2007. Rather than remove the primary sources of that collapse, namely, support for sub-prime lending provided by an unrestrained Fannie Mae and Freddie Mac and the Federal Reserve's over expansion of low interest credit, Congress and the President have tied America's financial system in knots of regulation and uncertainty. In addition to passing repeal of the Dodd-Frank "Reform" Act, the House should legislate the rapid dismantling of Fannie Mae and Freddie Mac and the establishment of a limited life Commission to

dispose of their assets in as orderly and financially sound a process as possible.

SOCIAL SECURITY: Had Social Security been changed from an income transfer system to an private, pre-tax income investment system in 1980, the vast majority of WWII Baby Boomers would be retiring with several times more income that they will receive from Social Security. This long-term investment gain would have taken place even with occasional short term downturns in the stock market. In addition, private retirement investment would have provided enormous amount of capital to drive prosperity and employment through the decades. This rational solution to the looming bankruptcy of Social Security did not occur due to the demagoguery of most politicians. So, what can be done with the retirement mess we now have?

Quit digging the hole any deeper! Start with allowing Americans not yet dependent on Social Security for retirement income, those less than 45, to opt out of a failed system in favor of self, employer, financial institution, or charity managed, but individually owned and inheritable Retirement Security Accounts (RSAs). Those with income levels that do not permit actuarially adequate investments in RSAs, will need to be funded from general revenues, at least temporarily. If other sound steps are taken to restore economic growth, the large but ultimately diminishing shortfall in Social Security funds for those that remain dependent on them also can be made up from general revenues.

Although a legal requirement to do so is constitutionally unclear, through the tax code, individuals would need to be required to invest actuarially minimum amounts of pre-tax income. The constitutional argument can be made that to prevent a total collapse

of our economic system from a variety of unfunded liabilities, a “common Defence” justification must be used to recover from the huge political mistakes of the past.

HEALTH SECURITY (3, 9, 17, 38): With the repeal of Obamacare legislation taken care of, the House should take steps to provide real legislative assistance to the healthcare system of the United States. A formidable list of problems exists for some individuals and in the runaway State and National costs of Medicaid and Medicare. Nonetheless, the majority of Americans clearly wish to address health care inadequacies in a constitutional and historically American way, that is, with reliance on individuals far more than government.

Although statements to the contrary are common, the Constitution of the United States cites no right to “health.” Rather, preservation of health clearly lies within the activities ***not*** enumerated as functions of the Federal Government and left to the people. Indeed, the people or the States have control of such activities by virtue of the 10th Amendment’s statement that “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.”

A constitutional path exists for health improvement, underlain by the federal government’s “common Defence” requirement for a healthy and vigorous population capable of providing for strong Armed Forces and a defense production force. This path begins with tax incentives that re-enforce the traditional patient-doctor relationship and allow most individuals to improve their health without government involvement. For example, tax-exempt and inheritable Health Savings Accounts (HSAs) would force down costs by encouraging price-conscious

shopping and health-conscious life styles while discouraging unnecessary access to healthcare providers. HSAs could rapidly replace Medicaid and Medicare if annual vouchers, issued by the States solely for health care as needed, allowed individual responsibility to substitute for bureaucratic irresponsibility.

Tax reform also could increase the supply and quality of future healthcare professionals. Multi-year tax-deductibility of direct educational expenses (tax loss carry-forward) would make medical and other professional careers more attractive. Tax-deductions also should apply to insurance purchased by individuals not covered by employers. Such tax-deductions should include insurance coverage of pre-existing conditions, catastrophic and home health care, annual medical examinations, wellness counseling, and vaccinations.

To assure that insurance becomes portable across state lines for American citizens and legal guest workers, insurance should be considered a commodity in interstate commerce under Article 1, Section 8, Clause 3. Discriminatory State insurance policies, preventing insurance commerce from being regular, should not be allowed any more that import tariffs at State lines. Research and development tax credits should encourage private research, development, availability, and cost reduction in pharmaceuticals, vaccines, devices, and collection and coordination of healthcare outcomes data. This policy should include a total restructuring of the federal drug and device approval process to emphasize sound science and eliminate political and tort interference.

Tort reform, of course, would go a long way to increasing the supply of health professionals and reducing healthcare costs. Threats of continuous streams of lawsuits

face current and future providers; lawsuits that now reach far beyond rare cases of actual negligence. Clearly, this litigation environment causes many to either leave medicine or reject it as a career choice. Tort reform, in turn, would reduce insurance costs, waiting times for treatment, and the use and costs of unnecessary defensive medical procedures. Access to advance treatments also would be encouraged by tort reform. Similarly, costs of drugs, vaccines and devices, and delays in their availability to patients in need would be significantly reduced. Plaintiff compensation, if warranted by willful malpractice or true negligence, must be limited to actual damages to avoid huge “lottery” awards. Judicial Standards must encourage Judges to throw out frivolous lawsuits and employ expert panels to advise in evaluating the scientific and medical merits of complex lawsuits. Huge contempt fines should be levied on the filing of such suits, if found to be frivolous.

Biomedical research, a traditional American strength, must continue and be further enhanced, particularly in the private sector’s drug and device arena. Science, feasibility, and consumer and physician demand, not politics or litigation risk, should drive investment decisions. Also, fundamental biomedical research (35) within the government-funded research community should continue at a steady pace as constitutionally supported by the Constitution’s “common Defence” mandate and the inherent requirements from Article I, Section 8, Clause 8 to protect “inventions”. Interstate and national security challenges presented by aging; concentrated populations in geologically unstable areas; changing battlefield injury and disease profiles; bio-terrorism, drug resistant and species-jumping diseases; and genetic screening justify this promotion of the constitutional “common Defence and general Welfare” through scientific research.

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rently is an aerospace and private enterprise consultant and a member of the new Committee of Correspondence.

40. CONSERVATIVE CONGRESSIONAL AGENDA AND THE CONSTITUTION #3

Harrison H. Schmitt
November 5, 2010

For Immediate Release (See Release Nos. 38, 39 of November 3 and 4, 2010)

FORMER SENATOR SCHMITT URGES CONSERVATIVE PRESSURE ON OBAMA: PHASE III – JUDICIARY, CLIMATE, IMMIGRATION

JUDICIARY: The continued packing of the American judiciary with judges that do not believe in constitutional law must stop. Senate Republicans have generally acquiesced to the Senate confirmation of Presidential nominations of federal judges, Attorneys General, and U.S. Attorneys. The new Senate Conservative Leadership must no longer agree to move any Court, Department of Justice, or U.S. Attorney nominees forward who have a record of disrespect or contempt for the Constitution.

A continuous and public case also must be made that the American justice system must be founded on support of the Constitution and the intent of the Founders. For those federal judges that persistently make decisions that fall outside the Constitution's limitations and guarantees, the House should initiate impeachment proceedings. Well-documented cases against such judges on constitutional grounds would go a long way toward making adherence to constitutional law a hallmark of the federal justice system.

As further constitutional guidance to the justice system as a whole, the new Congress should state by House and Senate Resolutions how it interprets various provisions of the Constitution applicable to new law. For example, the politically motivated lawsuit filed by the Federal Government against the

2010 immigration enforcement law of the State of Arizona assumes that Article VI, Clause 2, the so-called Supremacy Clause [24] of the Constitution, always allows federal law to trump State law. Basically, this position maintains that the Congress, with the agreement of the President, can override any State law. The Founders would not have agreed. The relevant portion of Clause 2 actually reads, “This Constitution, and the Laws of the United States which shall be made in Pursuance thereof...shall be the supreme Law of the Land...” The underlined phrases clearly indicate that federal supremacy applies only to the Constitution and laws made by virtue of Congress' enumerated powers. Those laws enacted by the States under their sole 10th Amendment powers, or natural rights reserved to the people by the 9th Amendment [36], lie beyond the reach of federal law so long as State laws honor other constitutional rights of the people.

Resolutions of Constitutional Justification should accompany the passage of any significant legislation as a clear indication to the Courts of congressional intent relative to that legislation. The Executive and Judicial branches of the federal government should be made to realize that ignoring such statements of intent raises the real peril of impeachment. The Congress also should make

it clear that it will not tolerate the use of extra-constitutional Court decisions based on non-U.S. legal systems or precedents.

CLIMATE CHANGE AND ENERGY [10 and 29]: The House “cap and trade” bill, H.R.2454, the misrepresented “American Clean Energy and Security Act of 2009”, will die as the 111th Congress comes to an end and good riddance. This Bill constituted an unconstitutional rejection of Congress’ Article I mandate to “provide for the common Defence and the general Welfare”. Such legislation to limit domestic energy production and to tax carbon emissions, if enacted into law, clearly would adversely affect the economy and thereby limit the Nation’s ability to counter potential adversaries or respond to direct attacks.

A House Climate Common Sense Resolution should be passed early in the 112th Congress, making it absolutely clear that Congress has no constitutional role in trying to affect climate change. This Resolution should recognize that the vast majority of recent climate change results from immense natural forces [30, 31, 32, 33, 34 and 37] we cannot control, rather than human use of fossil fuels. Senate Conservative Leadership should introduce a companion Resolution, forcing Democratic Senators to support this position or take a stand against national security, lower economic costs, and employment.

The President and Congress already have intentionally and aggressively weakened the nation’s economy and undermined the general welfare by focusing on deficit spending, a weak dollar, more heavy-handed regulations, future tax increases, and eventual inflation. A carbon emissions cap and tax on energy production and use further jeopardizes our ability to respond to security threats as well as inhibiting the private sec-

tor’s capacity to add new jobs. The focus of the Congress should be on producing more energy to maintain economic growth, to raise worldwide living standards and, where necessary, deal with the actual effects of natural climate change whether warming or cooling.

Americans will not forgive the loss of liberties in this unconstitutional power grab called “cap and trade”. Reducing energy costs by increased efficiency of conversion is one thing; but we should never limit growth in energy use and thus limit its associated improvements in human conditions and standards of living.

Congress should take direct and indirect actions to recognize that production and use of our own domestic oil, gas, coal, and nuclear resources buys us time to meet our international and economic energy challenges and, at the same time, preserve our liberty. Congress can constitutionally support sustained, long-term research and development [35] of energy alternatives, particularly those with clear and objective paths to commercialization, rather than continue tax dollar subsidies and loan guarantees for premature or flawed introduction of politically motivated concepts. We can provide truly competitive market, investment, and business environments that eventually will mature promising sources of future energy production as well as conservation.

The major areas the 112th Congress should address to provide an energy secure future are as follows:

Tax Rates: The House should lead in legislating a reduction in personal and business income tax rates in addition to the initial freezing of existing tax rates [38] established by the 2001 Economic Growth and Tax Relief Reconciliation Act.

Regulations: Congress should begin the elimination of regulations and regulatory authority not demonstrably related to defined constitutional powers and public safety. These steps should include the removal of regulatory bottlenecks on nuclear power plant and refinery construction and on exploration and production from beneath public land and offshore waters. House Committees should use subpoena power to require regulatory agency heads and appropriate White House officials to defend any regulation that restricts energy production or use in areas under United States jurisdiction.

Subsidies: Over the next four years, Congress should remove taxpayer subsidies and loan guarantees as related to all energy sources whether direct, through the tax code, or by other legislative or administrative mechanisms.

Public Land and Offshore Access: A major national security requirement for Congress is enactment of an accelerated program to encourage energy exploration and production from public lands or offshore waters where economically and technically feasible.

IMMIGRATION [19, 21]: The new Congress should make it immediately clear that it will reject any proposal to grant amnesty or an accelerated path to citizenship for illegal immigrants within the jurisdictions of the United States. Clause 4 in Article I, Section 8, of the Constitution makes amnesty of any specific group of non-citizens unconstitutional as it gives Congress only the power “To establish an *uniform* Rule of Naturalization.” The one-time amnesty for illegal immigrants in 1986 did not qualify as a “uniform Rule” nor would any other such move by the federal government. The 5th and 14th Amendments’ guarantee of equal protection of the law for all citizens also

would be violated if some immigrants must follow a different process to become citizens and not others, and if federal amnesty targets a specific group of non-citizens.

The requirements for national security, the often dysfunctional nature of government in Mexico, and the explosion of unfunded welfare liabilities make it necessary to take entirely new approaches to illegal immigration and the drug traffic embedded within it. Not surprisingly, the Constitution, directly or indirectly, includes everything necessary for Americans to address the realities of modern immigration.

Seal the Border: In providing for a Militia under Article I, Section 8, Clauses 15 and 16, the Constitution empowers both the Federal Government and the States, together or separately, to seal and enforce their international borders against illegal entry and one or the other, or both together, should do so. Also, Article I, Section 10, Clause 3 specifically gives the States the power “...to engage in War” when “actually invaded or in such imminent Danger as will not admit delay.” Clearly, Arizona and other Border States are being “invaded” by both non-citizens who would rob their taxpayers and criminals who would conduct illegal drug and terrorism-related activities within their jurisdictions. As recent near-border deaths and crimes show, delay in enforcement demonstrably constitutes “imminent danger” to all their citizens.

Guest Workers: Border-States should be encouraged individually to petition for the consent of Congress under Article I, Section 10, Clause 3, to contract with Mexico for temporary workers as required for unfilled jobs in labor intensive industries within their respective borders. These contracts should provide for vetting of workers relative to past criminal activity and outstanding war-

rants. Should the States not act, formalization of a national concept of “guest workers” appears to pass constitutional muster. This concept would be based on the systematic management of the national migrant worker supply so that supply matched the number and nature of available jobs not sought by American workers. As protection of the borders of the country constitutes a primary part of the federal responsibility for the “common Defence”, federal management of such a guest worker program would be constitutional. Clause 3 of Article I, Section 8, also may support a federal role overseeing those immigrants employed in interstate commerce.

Current Law: As part of taking control of illegal immigration, the Simpson-Mizzoli Act of 1986 should be repealed, immediately. Rather than a managed approach, that Act formalized the illegal status of migrants while in the United States and placed the onus of immigration law enforcement on employers.

Entitlements: The States and the Federal Government should respectively legislate to stop the provision of State and federal privileges and benefits to non-citizens. Nothing in the Constitution requires that they receive equal protection of American laws. We also should revisit and reverse past legislative and Federal Court determinations that rights and privileges under the Constitution apply to anyone illegally within the jurisdiction of the United States or born within that jurisdiction under false pretenses.

Legal Residency: Congress should provide an efficient and uniform method of gaining legal residency, particularly for needed high-skilled workers, and restrict the issuance of green cards to the immediate, nuclear family of a legal resident.

Identification: The current system of using State-issued driver’s licenses, or a comparable document for non-drivers, to identify American citizens should be continued. It is constitutional under the 10th Amendment, but the various States must accept the critical nature of this responsibility and issue identification only to citizens and legal residents. On the other hand, Congress should require that those States issuing driver’s licenses to illegal aliens cease this practice or, by 2012, federal agencies can no longer recognize that State’s licenses as valid identification. The driver’s license system’s resistance to counterfeiting should be improved through the application of federal technological research necessary to prevent and detect counterfeiting, applicable to Congress’ Article I, Section 8, Clause 6, power “To provide for the Punishment of Counterfeiting the Securities...of the United States.”

Further, Congress should formally reject attempts to impose national identification cards on all Americans, much less just on “workers.” this would look very much like the identification papers that came with Germany’s disastrous adoption of national socialism [16], adding to other trends in that direction now prevalent in the United States. Clearly, such cards, particularly if they contain personal information such as identifying DNA, runs afoul of the right to privacy guaranteed by the 9th Amendment [36].

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41. CONSERVATIVE CONGRESSIONAL AGENDA AND THE CONSTITUTION #4

Harrison H. Schmitt
November 9, 2010

For Immediate Release (See Release Nos. [38](#), [39](#), [40](#) of November 3, 4 and 5, 2010)

FORMER SENATOR SCHMITT URGES CONSERVATIVE PRESSURE ON OBAMA: PHASE IV – DEFENSE AND FOREIGN POLICY

Pressure to move forward toward continued American greatness clearly must include repair and rejuvenation of the economy with a multi-faceted approach to the many challenges outlined in Phases I-III of this post-2010 Election series of suggestions for Conservatives in the 112th Congress. External threats to American liberty, however, require congressional leadership related to national security and foreign policy although these are traditional areas left to Executive Branch constitutional initiative.

NATIONAL SECURITY [5, 23]: The Nation's economic house clearly must be put in order as rapidly as possible. The Constitution, however, charges the President and Congress, to "provide for the common Defence" as their first listed mandate with the "general Welfare" as second. The two requirements are not unrelated. In spite of the electorate's November 2nd concentration on the economy, healthcare, and general overreach by the President and the Liberal Leadership of Congress, the New Conservative Congress must address national security as a major priority.

Declaration of War: Current and future threats to liberty and the American people have not diminished since the end of the Cold War. Unfortunately, President Obama acts as if he were more at war with the

America of the past that its enemies of the present.

The Congress, therefore, should focus its attention, and that of the public, on our conflict with radical Islam by taking the President at his word, when, on January 7, 2010, he said, "We are at war with al Qaeda." The proliferation of attacks on the United States homeland over the past 12 months only has intensified this war in which al Qaeda forms just one of many groups of adversaries. Under its Article I, Section 8, Clause 11, power, Congress therefore should formally declare war on elements of radical Islam that increasingly attempt to kill American citizens and those of our allies, too often successfully.

A Declaration of War would force the Nation to establish priorities between the "common Defence" and the acceleration of unconstitutional domestic funding for Obamacare, Stimulus, TARP, regulatory overreach, and many other activities best left to the market place and individual responsibility. Such a Declaration also would bring attention to the need to stimulate growth and vigor in the American economy through reduced tax rates, logical and constitutional regulation, investment-based retirement and health security, and a strong dollar.

Impeachment: If the President refuses to exercise his constitutional mandates as Commander-in-Chief, then members or the House Leadership should begin impeachment proceedings against him. The Articles of Impeachment include, (1) Attorney General's prosecution of American warriors acting under orders from the former Commander-in-Chief; (2) treatment of radical Islamic terrorism events as "criminal" acts by non-citizens to whom should be given constitutional protections; (3) reduction and possible elimination of defenses against terrorist missile attack; (4) neglect of our nuclear deterrence of attacks or intimidation by other nuclear powers; (5) general reduction in the country's defensive capabilities and industrial base relative to current and potential threats; (6) lack of sufficient action against the possibility of clandestine importation of weapons of mass destruction; (7) limitation of border efforts to intercept terrorists and illegal aliens entering the country and unconstitutional lawsuits against a State attempting to protect its citizens; (8) lack of a sustained campaign against terrorist cells across the world as well as in the U.S.; (9) imposition of dangerously restrictive "rules of engagement" during battlefield actions against terrorist groups; and (10) intentional weakening of the country's economy and industrial base needed to support "the common Defence" resulting in increased financial dependence on China, a supporter of radical Islam and potential future adversary.

Defense Appropriations: The House should send the Senate and the President FY2011 and FY2012 Budget and Appropriations Bills that reach balance between expenditures and revenues without changes in existing tax rates. On the other hand, in recognition of the existing threat of radical Islam and the growing threat of a modernized Chinese military, the FY2012 and subsequent Budgets should follow the frank rec-

ommendations of the Armed Services for what is necessary to successfully counter and deter such threats. These recommendations of the Armed Services should be made and vetted in a secure setting as part of a debate between the Secretary of Defense and independent, knowledgeable experts.

FOREIGN POLICY [22, 27, 28]: The President has the constitutional responsibility to set and carry out foreign policy, balanced by the power of Congress in providing funds necessary for implementation. The primary roles of the new Congress in foreign policy none-the-less are significant through its Article I, Section 8 powers to control authorizations and appropriations related to the State and Defense Departments and the Intelligence Agencies. Also, Article II, Section II, Clause 2, requires that the Senate ratify by a two-thirds majority any Treaties signed by the President. In some cases, the House must participate in authorizations and appropriations necessary to implement a given treaty. Thus, the Conservative Leadership's power in Congress is considerable.

Strategic Arms Limitation Treaty: The Senate should not be allowed to ratify the New Strategic Arms Reduction Treaty (New START) signed with Russia in April 2010 and approved by the Democratic Senate Foreign Relations Committee in September. This treaty would clearly increase our global vulnerabilities in the nuclear weapons arena. In the absence of China, India, Pakistan, France, the United Kingdom, and Israel (as well as nuclear aspirants Iran, Syria, and others) this treaty makes no sense even if we could expect all countries to comply with negotiated agreements of this type. To make matters worse, the continued moratorium on nuclear weapons testing by the United States seriously undermines the deterrent value of our weapons stockpile. Pollyanna efforts by

President Obama to put the nuclear genie back in its bottle fly in the face of the horrible record of compliance by our adversaries with past arms reduction.

China: Congress must recognize that Cold War II began with the fall of the Soviet Union. China, unlike the then Soviet Union, constitutes both a military **and** an economic threat to our freedom and the freedom of all democracies. Congress must begin to fight Cold War II even if several Administrations, including the current one, have refused to recognize that it exists. The following legislative steps must be taken: (1) adopt pro-economic growth tax, entitlement, and regulatory reduction initiatives so the required defense expenditures can be made; (2) authorize and appropriate future defense budgets that provide counter expansions to China's conventional, nuclear, and asymmetric warfare capabilities; (3) immediately authorize and appropriate the resources for the Intelligence Agencies necessary to define all direct and indirect threats from China; (4) take steps to counter China's current near monopoly on many strategic materials; and (5) hold public hearings that force the Administration to face the reality of Cold War II.

Iran: Iran's aggressive pursuit of nuclear weapons and missiles to carry them threatens not only the existence of Israel, but also all of the major population centers of the world. President Obama has made it clear, however, that he is not worried about the long-term consequences of the war being waged against America and civilization by radical Islam. We must hope that Israel, our only true ally in the Middle East, and Iranian incompetence will prevent Iran's development of operational nuclear weapons before a new President takes office in 2013. As the world appears to work hand in glove with radical Islam to destroy the Israeli state and

the Israeli people, the Obama Administration gives appearances of desiring the same end. Not only is this stance morally repugnant, it is contrary to the President's constitutional responsibility to provide for the "common Defence" of the United States. Providing for our "common Defence" requires that we encourage democracy and its underlying freedoms in an otherwise hostile world and protect those freedoms wherever they have taken root. Our Republic could not be sustained if isolated in a totalitarian world. This has been the foundation of American foreign policy since President James Monroe's Secretary of State, John Quincy Adams, penned the Monroe Doctrine, telling Europe to keep its political hands off the Western Hemisphere. Congressional hearings on the Administration's view of the foundations of American foreign policy should be held in conjunction with a full review of the budget and activities of the State Department.

In the meantime, Congress can and should require the Department of Defense to place far greater emphasis on multifaceted missile defenses, including defenses against the full spectrum of non-ballistic delivery methods. These systems should be capable of defending the American Homeland and our allies from missiles launched from or by Iran, North Korea, and China. In addition, Congress should augment budgets of the Intelligence Agencies so that all possible information is available to our military services relative to the Iranian nuclear and missile efforts and the disposition and capabilities of its military and homeland defense forces.

Russia: Russia remains a significant threat to the free world because of its slide back into totalitarianism, its slowly modernizing military and nuclear forces, and its willingness to cooperate with other totalita-

rian states. Our looming dependency on Russia for access to space by American astronauts should be as worrisome as it is humiliating. Congress should hold public hearings that make Russia's continuing threat clear to the American people as well as to force the Administration and other nations to show more immediate and long-term concern about this worsening situation.

Retaliation: The House and, if possible, the Senate should pass Resolutions stating unequivocally that the Congress will declare War on any nation, entity, or movement that bears responsibility or complicity in a nuclear or non-nuclear mass destruction attack on the United States, or a massively crippling cyber-attack, or a mass conventional attack beyond our ability to counter. This action would help negate the President's ill-conceived and illogical announcement that nuclear retaliation by the United States has been taken off the table for attacks using non-nuclear weapons of mass destruction.

Latin America: The Senate Conservative Leadership must move rapidly to force ratification of trade agreements with friendly nations in Latin America and to provide clear messages to unfriendly nations, like Venezuela, that we will take concrete efforts to bring such nations back into the democratic fold. Congress should declare a Congressional "Monroe Doctrine" by Resolutions in both the Senate and the House that the Congress will not tolerate any political or military interference in the Western Hemisphere by Iran, China, or any other nation. Iran's assistance to the Chavez dictatorship in Venezuela and China's economic intru-

sions into Panama and the oil fields of the Gulf of Mexico represent a significant erosion of the national security position of the United States and the democratic nations of Latin America.

Climate Change Treaty [10, 29, 30, 31, 32, 33, 34, 37]: The Congress should continue to prevent the ratification of any treaty that obligates the United States to any reduction in its use of fossil fuels. The Congress also should make it clear to the rest of the world that it will not tolerate the de facto implementation of a Climate Change Treaty by unlawful regulation or Executive Order. All such attempts should be defunded through the Appropriations process and then vetoed once a One House Legislative Veto has been put in place.

These suggestions to the new Conservative Leadership in Washington represent the most immediately pressing actions awaiting the 112th Congress. Many other important but less timely issues also must be addressed, but we must keep our eyes on the ball and the 2013 election when the Revolution can continue. A large majority of Americans stand behind the results of the 2010 Midterm Elections. We cannot let them down.

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42. MONETARY POLICY AND THE CONSTITUTION

Harrison H. Schmitt
December 7, 2010

For Immediate Release (See Related Release No. 4 of January 8, 2010)

Former Senator Schmitt Challenges the 112th Congress to Take Control of Monetary Policy

The Founders gave Congress the constitutional power in Article I, Section 8, Clause 5, “To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures”. The intent of this Clause clearly lay in having a stable national currency, with a defined relationship to foreign currency, and tied to a standard weight and measure of silver or gold, the universally accepted media of coinage. Clause 6 of Section 8 further emphasizes the Founders’ intent to protect the value of the “Coin of the United States” by providing to the Congress the power to punish counterfeiting.

The Founders understood the basic principle that consumer demand and the supply of money determined the prices of goods and services. Growing economies require a stable value of national “coinage”, or money, and a quantity of money that grows in cognizance with growth in demand. Without monetary policy that met these criteria, an economy would be subject to either inflation or deflation if there were, respectively, a money supply excess or deficiency.

Other factors cause lags in the time correlation between money supply and prices, including overall economic demand and asset valuations, consumer use of discretionary funds to pay down debt rather than consume,

and changes in the velocity of money (rate of money’s movement through the economy). Nonetheless, history and logic clearly show that if an increase in the money supply occurs in excess of the increase in the demand for goods and services, inflation results, lagging the money supply increase by a year or so depending on the rate of growth in demand.

As recently reminded by Seth Lipsky (*Wall Street Journal*, 11/17/10), the use of the word “dollar” at the time of the ratification of the Constitution and in the 1792 Coinage Act referred to a specific “weight and measure” of the Spanish Milled Dollar, namely, 371.25 grains (0.849oz) of silver. The standard value for silver relative to gold was set at 15:1 with the small level of copper alloyed with either silver or gold defined as well. In modern times, the previously practical tie between the value of silver and gold has weakened as the demand for silver has become partially tied to its more extensive use as an industrial metal.

Worth noting is that the penalty stated in the 1792 Coinage Act to be imposed on the officials of the United States Mint for fraud, embezzlement, or debasement of the currency was death. The Founders clearly anticipated that a tie of the American dollar to silver and gold would be their means of re-

gulating the value of the dollar, as well as its value relative to “foreign Coin”, and were deadly serious about preserving that value.

Although gold generally has been a hedge against inflation, in the 1500s and 1600s rampant inflation swept Europe due to rapid increases in gold and silver supplies from new European production and then Spain’s production from the New World. That temporary inflationary effect receded as the industrial revolution raised the supply of consumer goods throughout Europe. Variations in gold supply increases (production about 2.5 metric tonnes per year) have been relatively minor in the last 150 years relative to the estimated current global historically mined inventory of ~180,000 tons (worth ~\$5.76 trillion with a gold price of \$1000 per ounce), with global official government reserves of about 36,000 tons (worth ~\$1.15 trillion at \$1000/oz).

A largely politicized Federal Reserve System now has created a critical emergency in monetary policy. Led by Chairman Ben Bernanke, the Federal Reserve plans to again violate the Founder’s intention of having a stable currency by further monetization of the still rising national debt through printing another \$600 billion out of thin air, euphemistically called “quantitative easing” or QEII. The Fed’s monetary policies, created at the behest of the Obama Administration, have created the potential for rampant future inflation, once some semblance of sustained economic recovery appears. Whatever its domestic political intent, QEII also has seriously threatened the economic growth of our trading partners. One must wonder if the 1792 Coinage Act’s penalty for debasement of the currency still applies.

The recent disclosure by the Fed that large banks and businesses took advantage

of \$3.3 trillion in Fed loans beginning in December 2008 dwarfs QEII. What of substance stands behind such largess other than the Feds printing press or the taxpayer’s implicit guarantee of the loans? How did this loan policy remain secret for so long? Were the loans actually bribes to get banks and businesses to support the new Administration’s fiscal policies? Congress not only must take back its power over monetary policy but it must investigate this additional travesty in the exercise of dictatorial power.

In matters relative to Federal Reserve’s unconstitutional, 1978 congressional mandate (Humphrey-Hawkins) to promote the goal “of maximum employment”, the alleged rationale for QEII, the Congress has no direct constitutional power to regulate or legislate relative to employment or industrial policy, other than through tax and defense policy. In addition to its unconstitutionality, the bipolar mandate to both stabilize the dollar and destabilize the dollar and increase debt to further employment is inherently contradictory.

As currently legislated in matters relative to the value of the dollar, the Federal Reserve System acts outside the intent of the Founders and the words of the Constitution. Although Clause 18 of Article I, Section 8, provides Congress with the power to “Make all laws necessary and proper for carrying into execution...” the Coinage Clause, Congress has no constitutional power to totally abrogate its responsibility to “regulate the Value” of currency. In establishing the Federal Reserve System in 1913, and in subsequent Amendments to the founding Act, Congress made no provision for itself to independently regulate actions of the Federal Reserve that may adversely affect the value of United States currency or the value of that currency relative to foreign currency.

Creation of a One House Legislative Veto process^[1] relative to perpetuation of any Federal Reserve decision related to monetary policy would provide constitutional cover if Congress wishes to re-authorize the Federal Reserve as an arm of its Coinage Clause power. The Legislative Veto should apply to any policy that stays in effect for more than one year and is deemed, by Resolution of either the House or Senate, to create sustained monetary inflation or deflation of more than one percent, annually.

Clearly, the Federal Reserve System no longer operates in the national interest. Congress should take the opportunity given it by the 2010 elections to assert its constitutional responsibility to stabilize the dollar and build the foundations for a vibrant, worldwide economic and trading environment. A monetary standard that combines the stabilizing power of gold with adjustments related to real wealth creation would go far in achieving this goal. The basis for a gold-wealth creation monetary standard should consider the following:

1. "Coinage", hard or paper, evolved within human affairs to increase the efficiency of economic activity versus what would be possible in a barter or precious metal exchange economy. Setting the value of any form of money, however, has been increasingly important, particularly in the United States, as wealth creation accelerated after the industrial revolution and with the efficiencies of capitalism. Further, almost since the country's founding, U.S. Administrations repeatedly have tried to manipulate the money supply to satisfy either political objectives or the necessities of national defense.

2. A pure, 100% gold standard or "specie" standard would tie the total value of

paper and coin currency to the amount of gold reserves held by the Federal Reserve. A 100% gold standard clearly provides a barrier to inflation if the reserves or value of gold remain constant and the supply of goods and services does not decrease, drastically. On the other hand, a 100% standard creates a brake on economic growth unless gold reserves or their value grow at the same rate as the private sector's potential for wealth creation. Unfortunately, such an inherent correlation does not exist.

3. An ideal modern coinage standard would be based on the market value of gold, adjusted by an index to a multiyear moving average of the rate of increase in true national wealth as measured by sales and investments rather than by the cost of creation of that wealth. The "cost" of goods or services created, but for which there is no demand, does not reflect the creation of new wealth.

4. Properly measured, an index of national wealth creation (INWEC) would inherently include the rate of increase in sales of domestically produced goods and services that contribute directly to the long-term growth of national wealth. A congressionally mandated basket of specific, domestically derived, INWEC for goods and services should be limited to the following: commodities, manufactured goods, communications services, software, private education services, and research investments. Any regulatory attempt to change the composition of the final congressional INWEC basket should be subject to a One House Legislative Veto.

5. Other than funds invested in basic and applied research, direct and indirect federal expenditures should not be in-

cluded in the index of national wealth creation. If they were, the potential for political manipulation of the value of the dollar would still exist.

A stabilizing gold-wealth creation monetary standard for the value of American currency would both prevent increases in inflation due to politically motivated additions to the money supply, as the Federal Reserve currently is attempting, and adjust the dollar's value over multiyear periods to reflect realistic economic growth variables.

The 112th Congress needs to get to work immediately on permanently stabilizing monetary policy and other items on its economic recovery agenda.

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[1] The Founders clearly intended by Clause 18 of Article I, Section 8, that enactment of federal laws to be the responsibility of the Congress and not passed on to the Executive Branch through generalized regulatory authority. In order to return to the Founders' intent, Congress should create a One House Legislative Veto process relative to any decision, order, or regulation promulgated by the Executive Branch. That process of regulation review and potential disapproval should begin with 20 percent or more of the members of either House petitioning to discharge an introduced Resolution of Disapproval from the relevant Committee or Committees and move its consideration to the floor of the initiating House. If the Resolution passes either House, the Congress can maintain constitutional control of this On House Legislative Veto process by a sequence of one House passage of a Resolution of Disapproval, followed by the other House's opportunity to pass a Resolution of Disapproval of the first House's action. This sequence avoids the constitutional requirement for the President to sign any joint action by the House and Senate (Article I, Section 7, Clause 3). Should an Agency or Department refuse to honor the Legislative Veto of a specific regulation, the Congress should use the Appropriations Bill to rescind funding for its enforcement.

43. REGULATION AND THE CONSTITUTION #1

Harrison H. Schmitt
January 4, 2011

For Immediate Release

Former Senator Schmitt Cites Constitutional Limits on Regulatory Government

Regulatory intrusions into the social and economic fabric of America have reached crisis levels in their attack on individual and collective freedom. Recent actions by the Obama Administration in placing regulatory limits on healthcare, the Internet, the use of public lands, transportation, energy production and transmission, and financial transactions merely constitute the tip of a colossal authoritarian iceberg ahead of the American Ship of Liberty.

It is now obvious that Congress got America into a real pickle when it agreed in 1933, as part of Roosevelt's New Deal, to delegate law-making power to agencies under the control of the President. This unconstitutional and increasingly threatening situation became entrenched with the passage of the 1946 Administrative Procedures Act. APA set up the formal mechanisms for creating regulatory law outside any direct action by Congress.

With the Administrative Procedures Act, Congress gave the Executive Branch almost complete responsibility for directly overseeing the economic burden, legality, and the constitutionality of non-legislative regulations. The legal oversight of regulatory law through the Federal Courts, and its costs were left to the people and the States, as the current challenges to healthcare law and regulations so clearly illustrate.

Does any constitutional authority exist for Congress to transfer the power to establish regulatory law to a federal agency? The very limited answer to this question is "yes." Clause 18 of Section 8, Article I, gives Congress the final power, "To make all Laws which shall be necessary and proper for carrying into execution the foregoing Powers and all other Powers vested by this Constitution in the Government of the United States, or any Department or Officer thereof." The underlined phrases, however, clearly limit Congressional authority to enumerated powers, specifically Clauses 1-17. Federal Judge Henry Hudson's recent ruling that Clause 18 "may only be constitutionally deployed when tethered to a lawful exercise of an enumerated power" reinforces this obvious limitation.

Unfortunately for the economy and liberty, the limited congressional delegation of authority under this "necessary and proper" Clause has morphed into a vast and growing array of administrative regulations that suffocate private initiative and intrude into the lives of Americans far beyond the constitutional authority of the Congress and the Executive. Now, by ignoring enumerated powers, some would argue that the Congress can give the Agencies the authority to regulate almost everything Americans do by invoking the "general welfare" clauses of the Preamble and Article I, Section 8, Clause 1,

or through the “interstate commerce” Clause (Article I, Section 8, Clause 3). Such an argument blatantly ignores the word and intent of the Founders related to these two clauses.

The full Article I “general welfare” phrase, in fact, reads, “provide for the common Defence and general Welfare.” Following Clauses both specify and limit the specific powers of the Congress in regard to the common defense and general welfare, but none give Congress power to do anything it decides is politically or ideologically expedient. This phrase also must be viewed in the context of the more inclusive phrase “promote the general welfare” contained in the Preamble to the Constitution. That phrase in the Preamble sets out one of several basic reasons for the establishment of our form of government, and, in so doing, it links the Article I Congressional general welfare power to other constitutional provisions. Of particular note in this regard are (1) the lack of any Section 8 enumeration of forms of “general welfare” open for Congressional intervention beyond the specifically stated areas and (2) the combined effect of the 5th and 14th Amendments that make unconstitutional the legislative imposition of reward or penalty on some and not on others and thereby depriving those others of “equal protection of the law”. Unequal protection forms the basis of almost all regulatory law.

Nor can the power of Congress to regulate interstate commerce under Clause 3 of Section 8 provide constitutional justification for federal regulation of everything involved in commerce. Clause 3 merely states that Congress has the power “To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes”. This Clause was intended to make commerce “regular” among the States, that is, to prevent artificial political, taxation, or other

barriers from being created that would prevent the free flow of commerce between States. It was not intended to give Congress the power to regulate the details of actual commercial interactions, either directly or indirectly. Judge Hudson eloquently counters an expansive interpretation of the Commerce Clause in his recent ruling on the 2010 healthcare law that an individual mandate to buy health insurance under Obamacare unconstitutionally expands the scope of the Commerce Clause.

For example, the Commerce Clause permits the President’s appointees to be authorized by Congress to capture and prosecute persons involved in interstate highjacking, wire fraud, and other commerce-related crimes. Congress also can direct agencies to oversee interstate road, rail, and river transportation as well as interstate energy transmission. Federal regulatory activities in these and comparable arenas counter threats to uninterrupted commerce between the States.

What can be done to restore constitutional control over regulatory law? The Founders clearly intended by the language of Article I that enactment of federal laws be the responsibility of the Congress and not passed on to the Executive Branch through generalized regulatory authority. The primary responsibility for reform therefore lies with the Congress. In order to return to the Founders’ intent, Congress, first of all, should adhere to the original constitutional limitations of Article I, Section 8, relative to the transfer of regulatory authority to Executive Branch agencies. Second, a schedule for the sunset of existing regulatory authorities should be set in law along with a commitment to a coordinated schedule for constitutional and policy review by relevant Committees.

Then, by Rule and by action, neither House of Congress should allow floor consideration of any Bill or Joint Resolution that is not accompanied by a comprehensive constitutional analysis and justification, that is, a Constitutional Authority Statement. In addition, any Legislative Act should include such a Statement as modified by floor and Conference deliberation. If a Bill's Constitutional Authority Statement has not been approved by a roll-call vote of two-thirds of the members, the legislation automatically should be referred back to Committee.

What, then, can be done to restore constitutional control over existing regulatory law? Of course, if a constitutional challenge to a regulation is warranted, relevant authorities in the Congress can file suit in Federal Court to have that regulation or any generalized regulatory authority struck down. Relative to legislative action, the Constitution (Article I, Section 7, Clause 3) would appear to limit Congressional repeal of regulatory law or general regulatory authority to a separate bill passed by both Houses and signed by the President. In spite of the fact that the President is bound to uphold the Constitution, he or she may decide not to sign a Bill of Repeal. The President also may have conflicts of interest, as it would have been Agencies administered by his appointees, operating under Presidential authority, which issued the various regulations in the first place.

Alternatively, agreement by the House and Senate to a One House Legislative Veto process provides an additional constitutional approach to regulatory review and potential disapproval of regulations or any Executive or Agency order having the effect of a regulation. By compatible Resolutions, the House and Senate could create a One House

Legislative Veto process relative to any decision, order, or regulation promulgated by the Executive Branch. Under this process, any Member could introduce a Resolution of Disapproval of a specific regulation or set of related regulations. The Committee of jurisdiction would have 60 days to act after which a discharge petition signed by at least 20 percent of the Members of the relevant body would be in order on that body's floor. The 20 percent requirement limits the possibility of tying up the business of the House or Senate with frivolous or personal use of a Resolution of Disapproval.

If a Resolution of Disapproval passes either House, the Congress can maintain constitutional control of its Legislative Veto process by adhering to the following sequence: one House passage of a Resolution of Disapproval, followed by the other House's opportunity within 60 days to pass a Resolution of Disapproval of the first House's action. This sequence avoids the constitutional requirement for the President to sign any joint action by the House and Senate. Should an Agency or Department refuse to honor the Legislative Veto of a specific regulation, the Congress can hold that Agency or Department in contempt of Congress or use a relevant Appropriations Bill to rescind funding for enforcement of the offending regulation.

The 112th Congress must counter the Obama Administration's now obvious intent to assume authoritarian power through regulatory fiat. This is one of the many opening battles in continuing the 2010 Revolution prior to the 2012 elections when super majorities in the House and Senate as well as the Presidency must be in the hands of men and women willing to govern as the Founders intended.

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44. ENERGY AND THE CONSTITUTION #1

Harrison H. Schmitt
February 17, 2011

For Immediate Release

Former Senator Schmitt Advocates a National Energy Plan as Constitutionally Mandated

The constitutional mandate for a rational, scientific, and economically sound national energy plan lies in its close modern relationship to the constitutionally mandated “common defence”. Dependence on foreign sources of oil, and therefore transportation fuels, limits both near and long-term national security options. That dependence also creates an economic burden to our economy that restricts the liberty of Americans and their 9th Amendment guarantee of the pursuit of happiness.

Dependence on imported oil removes the defensive and foreign policy leverage needed to prevent attacks by terrorist states. Imports subsidize the financial supporters of terrorism. Dependence has the further effect of giving the United States no influence over the price it pays for oil. If the price of oil came under the direct economic influence of the United States, for example, Iran would have great difficulty affording the development of nuclear weapons and their delivery systems.

Dependence on oil and gasoline imports also gives China further means to intimidate our national leaders into acquiescence to its continuing ambition for international dominance. China’s rapidly growing economy has a major influence on world energy supply and cost, competing directly with our

needs. Cold War II has begun; however, it is being fought on an economic and energy front as well as on a military deterrence front. On this point, China’s rapidly developing space capabilities and its expressed interest in lunar helium-3 energy resources cannot be ignored.

Many varied elements are necessary to a long-range plan that would ultimately provide for energy independence and a more stable economy. A scientifically and economically based, long-range plan also would provide far more benefit to the preservation of the environment and natural resources than possible today.

In the near term, Congress must take back the control of regulatory laws it has transferred to the Executive Branch, particularly those rules that prevent attaining energy independence from commercially viable natural energy resources. Closely tied to independence are the facilities necessary to refine domestic crude oil into gasoline, diesel, and jet fuel. The One House Legislative Veto described previously in these essays [\[1\]](#) constitutes a constitutional means for the Congress to control rule making delegated to the Executive.

President Obama’s continuing statements and restrictive actions notwithstand-

ing, the only commercially viable natural resource that currently offers an unsubsidized path to independence from imported oil is domestically accessible crude oil along with the domestic refineries necessary to create fuel oil, diesel, gasoline, and jet fuel. Natural gas offers some potential to reduce imports; however, the use of tax credits or direct subsidies of the initial capital costs for fleet conversions to natural gas, or even automobile conversions, should come with payback provisions as those conversions realize long-term economies.

To fully understand the potential and challenges of gaining near-term energy independence, industry, national, and state policy makers require a more complete understanding of the potential resources of oil and natural gas available beneath public lands and in off-shore areas. A rapid, cooperative industry-federal-state scientific assessment of those potential resources would provide the knowledge necessary to evaluate the private investments and national enabling policies necessary to achieve and maintain independence.

Research and technology development aimed at future commercially viable alternative portable fuels should focus on the following: coal liquids, ethanol from nonfood crops, and algal bio-diesel, and water-derived hydrogen from catalytic systems energized by the sun or by waste heat from needed power plants. Significant historical and current technological progress has been made with regard to these fuels; however, commercial viability must include production costs low enough to enable the creation of convenient and cost-effective fuel delivery infrastructures. Battery-based systems do not constitute a viable, broadly applicable alternative portable drive system due to their very low, coal- or uranium-to-power-train

total efficiency, as well as their charging inconvenience.

Major solar energy systems such as a large scale wind and solar electric plants are far from being competitive without major subsidies from taxpayers or ratepayers. For these systems to have any hope of being practical contributors to the national energy mix, a significant technology development effort must be undertaken by industry. Due to the great competitive gulf between these systems and standard coal and nuclear systems, it is questionable if the federal government should be funding a new round of technology development. Many more critical energy initiatives require urgent attention.

Other essays in this series [2] have made the scientific case that climate change largely results from natural phenomenon and that attempts to reduce the very small human induced component to such change will have little practical effect. At the same time, misguided political efforts to control climate change unconstitutionally restrict the liberties of Americans. On the other hand, even if not persuaded by the scientific evidence *against* human-caused climate change, the replacement of end-of-life coal-fired power plants with advanced nuclear plants constitutes the best of all economic and environmental worlds. The first step in such replacement should be the reform and streamlining of regulations governing nuclear plant construction. If that is done, and the time necessary to construct plants is halved, investment capital will follow the demand without any need for loan guarantees or subsidies.

At the same time as America should be moving toward nuclear power as the source of most of its electricity, the effort to find underground repositories for the burial of

spent nuclear fuel rods should be abandoned. Monitored, retrievable, above ground storage makes much more sense in the long-term. Future reprocessing of these rods will provide additional fuel for electrical power generation as well as numerous useful isotopes for medical and industrial applications. The actual useless waste, that is, the much reduced, left over high-level radioisotopes, ultimately can be changed (transmuted) into stable isotopes or easily confined short-lived radioisotopes.

Reprocessing of nuclear fuel rods and transmutation of the remaining high-level radioactive waste will require significant new investment by industry if allowed by federal authorities. Although defense-related spent fuel rods are currently reprocessed and France reprocesses their civil reactor fuels, commercial reprocessing development in the United States was terminated by the Carter Administration. It should be restarted, immediately. Transmutation of actual waste from reprocessing can be done most efficiently by exposure of radioisotopes to energetic protons produced by helium-3 fusion systems. Until reprocessing and transmutation technologies have been developed to a commercial level of readiness, above ground, spent fuel rod storage is the most practical solution to this contentious issue.

In the longer term, the development of modular nuclear breeder systems, high temperature gas reactors, thorium-fueled reactors, and lunar helium-3 fusion should be part of the mix of systems examined by robust research and technology development programs. Government, industry, and academia should be mobilized into joint technology development efforts not unlike those that made American aeronautics the envy of the world in the 20th Century. Unfortunately, inherent scientific, engineering, capital cost, and waste disposal issues mean that the

billions spent on pursuing tritium-fueled fusion will not succeed in developing a commercially viable fusion power system.

A central underlying issue in the implementation of a defense-oriented national energy plan continues to be the lack of both objectivity and quality in the American educational system [3]. From beginning to end, most young people now miss both the essential foundations of history, constitutional government, and science and mathematics necessary to participate in the implementation of such a plan. No energy plan, much less our national defense can be successful unless the States begin to fully live up to their 10th Amendment responsibilities in education. As during the height of World War II and the Cold War, the Federal Government only should be a non-controlling partner in the funding of those elements of science and engineering education essential to the “common Defence” but no more than this if liberty is to be preserved.

Previous Congresses and Administrations have not upheld their constitutional mandate to “provide for the Common defence” relative to energy and instead have used politically motivated legislation and regulation to prevent the private sector from providing for the nation’s critical energy needs. This neglect has led to a national security crisis through progressively increased dependence on foreign sources of oil as well as other strategic resources. The Constitution requires that there be a concerted and immediate federal focus on energy independence. This is not what the Founders would have desired, but past neglect means no choice remains other than capitulation to the economic and military intimidation of the enemies of liberty.

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Notes cited in Text

1. The Founders clearly intended by Clause 18 of Article I, Section 8, that enactment of federal laws to be the responsibility of the Congress and not passed on to the Executive Branch through generalized regulatory authority. In order to return to the Founders' intent, Congress should create a One House Legislative Veto process relative to any decision, order, or regulation promulgated by the Executive Branch. That process of regulation review and potential disapproval should begin with 20 percent or more of the members of either House petitioning to discharge an introduced Resolution of Disapproval from the relevant Committee or Committees and move its consideration to the floor of the initiating House. If the Resolution passes either House, the Congress can maintain constitutional control of this On House Legislative Veto process by a sequence of one House passage of a Resolution of Disapproval, followed by the other House's opportunity to pass a Resolution of Disapproval of the first House's action. This sequence avoids the constitutional requirement for the President to sign any joint action by the House and Senate (Article I, Section 7, Clause 3). Should an Agency or Department refuse to honor the Legislative Veto of a specific regulation, the Congress should use the Appropriations Bill to rescind funding for its enforcement.
2. See: Press Releases [7](#), [18](#), [29](#), [30](#), [31](#), [32](#), [33](#), [34](#), and [37](#).
3. See: Press Releases [13](#), [14](#), [15](#), and [25](#).

45. PUBLIC EMPLOYEE UNIONS AND THE CONSTITUTION

Harrison H. Schmitt
March 1, 2011

For Immediate Release

Former Senator Schmitt Finds Public Employee Collective Bargaining and Binding Arbitration Unconstitutional

The constitutionality, as well as the common sense and fairness of collective bargaining for teachers and other public employees, has been brought to the fore by events in Wisconsin, Indiana, Ohio and other states. Of particular note and immediate importance are attempts to balance state budgets and eliminate growing state deficits—and the protests organized to fight such efforts. In addition to supporting the public employee unions and opposing Governor Walker and the majority of legislators in the Wisconsin dispute, President Obama has made the dangerous decision to allow collective bargaining by employees of the Transportation Security Administration (TSA) [see essay [No. 2](#)].

The 9th Amendment of the Constitution of the United States guarantees the natural right of free association along with other rights that come by nature to a free people [see essay [No. 36](#)]. The 5th Amendment, however, guarantees that no American “shall be deprived of life, liberty, or property, without due process of law”. This 5th Amendment guarantee should prevent governments from obligating portions of taxpayer incomes by entering into collective bargaining and binding arbitration agreements with public employees.

In the private sector, constitutional collective bargaining and binding arbitration agreements may deprive shareholders of stock or dividend value. Shareholders, however, always have the option to liquidate their interests in a particular private company if bargaining or arbitration with unions hurts the value of their stock. In contrast, negotiated increases in the cost of pay, pensions, health insurance, and other benefits for public employees deprive taxpayers of their property, that is, incomes, without having access to “due process” during the negotiations between unions and governments.

Use of union dues derived from taxpayer funded public employee incomes raises an additional constitutional question. Those dues not only support lavish salaries and benefits for union officials, but they are also used to disproportionately fund the political campaigns of one political party (often against the will of individual members). Thus, this political use of public employee dues effectively has taxpayers supporting one political party, again without “due process.” Public employee union dues become even more constitutionally egregious when state and local governments automatically collect these dues and turn them over for the unions’ private use.

If collective bargaining and binding arbitration are unconstitutional, how should those public employees responsible for public safety be dealt with equitably? Once again, constitutional means to solve this problem exist. Elected officials should be charged by the electorate with providing pay and benefits commensurate with the enormous responsibilities and dangers of public safety employment (e.g., fire fighters and police officers). If they do not, then, at the next election, these officials should be replaced with new officials that will.

Finally, the constitutionality of government-sanctioned union shops also should be questioned vigorously. Union shops are those workplaces where potential employees must become a union member to get or hold a job. The 9th Amendment to the Constitution reserves all inherent natural rights to the people. Among those natural rights is the right to work, thus making mandatory union shops specifically unconstitutional. Right to

Work laws in many states merely reinforce what is a constitutional right of all Americans.

The political battles being waged in many states to balance budgets and create economic growth and employment constitute one of the most critical internal confrontations in the history of the United States. Democrat elected officials, including the President, do not provide rational or credible support for these budget efforts. Indeed, their active opposition again emphasizes the importance of continuing the 2010 conservative revolution into the 2012 election cycle.

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46. SPACE POLICY AND THE CONSTITUTION #4

Harrison H. Schmitt
May 25, 2011

For Immediate Release (See also Related Releases Nos. [7](#), [18](#), [20](#), [25](#), and [35](#) of January 8, 13, April 25, May 28, and September 1, 2010)

Former Senator Schmitt Proposes Dismantling of NASA and Creation of a New, National Space Exploration Administration (NSEA)

On May 25, 1961, President John F. Kennedy announced to a special joint session of Congress the dramatic and ambitious goal of sending an American to the Moon and returning him safely to Earth by the end of that decade. President Kennedy's confidence that this Cold War goal could be accomplished rested on the post-Sputnik decision by President Dwight D. Eisenhower to form the National Aeronautics and Space Administration and, in January 1960, to direct NASA to begin the development of what became the Saturn V rocket. This release of a collection of essays on *Space Policy and the Constitution* [\[1\]](#) commemorates President Kennedy's decisive challenge 50 years ago to a generation of young Americans and the remarkable success of those young Americans in meeting that challenge.

How notions of leadership have changed since Eisenhower and Kennedy! Immense difficulties now have been imposed on the Nation and NASA by the budgetary actions and inactions of the Bush and Obama Administrations between 2004 and 2012. Space policy gains relevance today comparable to 50 years ago as the dangers created by the absence of a coherent national space policy have been exacerbated by subsequent ad-

verse events. Foremost among these events have been the Obama Administration's and the Congress's spending and debt spree, the continued aggressive rise of China, and, with the exception of operations of the Space Shuttle and International Space Station, the loss of focus and leadership within NASA headquarters.

The bi-partisan, patriotic foundations of NASA underpinned the remarkable Cold War and scientific success of the Apollo Program in meeting the goal of "landing a man on the Moon and returning him safely to the Earth". Those foundations gradually disappeared during the 1970s as geopolitical perspectives withered and NASA aged. For Presidents and the media, NASA's activities became an occasional tragedy or budgetary distraction rather than the window to the future envisioned by Eisenhower, Kennedy and the Apollo generation. For Congress, rather than being viewed as a national necessity, NASA became a source of politically acceptable "pork barrel spending" in states and districts with NASA Centers, large contractors, or concentrations of subcontractors. Neither taxpayers nor the Nation benefit significantly from this current, self-centered rationale for a space program.

Is there a path forward for United States' space policy? When a new President takes office in 2013, he or she should propose to Congress that we start space policy and its administration from scratch. A new agency, the National Space Exploration Administration (NSEA), should be charged with specifically enabling America's and its partners' exploration of deep space, inherently stimulating education, technology, and national focus. The existing component parts of NASA should be spread among other agencies with the only exception being activities related to U.S. obligations to its partners in the International Space Station (ISS).

Changes in the Space Act of 1958, as amended, to accommodate this major reinvigoration of the implementation of space and aeronautical policy should be straightforward. Spin-off and reformulation of technically oriented agencies have precedents in both the original creation of NASA in 1958 by combining the National Advisory Committee on Aeronautics (NACA) and the Army Ballistic Missile Agency and the creation of the United States Air Force in 1947 from the Army Air Forces.

The easiest change to make would be to move NASA Space Science activities into the National Science Foundation (NSF), exclusive of lunar and planetary exploration science but including space-based astronomical observatories. At the NSF, those activities can compete for support and funding with other science programs that are in the national interest to pursue. Spacecraft launch services can be procured from commercial, other government agencies, or international sources through case-by-case arrangements. With this transfer, the NSF would assume responsibility for the space science activities of the Goddard Space Flight Center and for the contract with Caltech to run the Jet Propulsion Laboratory.

Also, in a similarly logical and straightforward way, NASA's climate and other earth science research could become part of the National Oceanic and Atmospheric Administration (NOAA). NOAA could make cooperative arrangements with the NSF for use of the facilities and capabilities of the Goddard Space Flight Center related to development and operation of weather and other remote sensing satellites.

Next, NASA aeronautical research and technology activities should be placed in a re-creation of NASA's highly successful precursor, the NACA. Within this new-old agency, the Langley Research Center, Glenn Research Center, and Dryden Flight Research Center could be reconstituted as pure aeronautical research and technology laboratories as they were originally. The sadly, now largely redundant Ames Research Center should be auctioned to the highest domestic bidder as its land and facilities have significant value to nearby commercial enterprises. These actions would force, once again, consideration of aeronautical research and technology development as a critical but independent national objective of great economic and strategic importance.

NASA itself would be downsized to accommodate these changes. It should sunset as an agency once the useful life of the International Space Station (ISS) has been reached. De-orbiting of the ISS will be necessary within the next 10 to 15 years due to escalating maintenance overhead, diminished research value, sustaining cost escalation, and potential Russian blackmail through escalating costs for U.S. access to space after retirement of the Space Shuttles. NASA itself should sunset two years after de-orbiting, leaving time to properly transfer responsibility for its archival scientific databases to the NSF, its engineering archives to

the new exploration agency, and its remaining space artifacts to the Smithsonian National Air and Space Museum.

Finally, with the recognition that a second Cold War exists, this time with China and its surrogates, the President and Congress elected in 2012 should create a new National Space Exploration Administration (NSEA). NSEA would be charged solely with the human exploration of deep space and the re-establishment and maintenance of American dominance as a space-faring nation. The new Agency's responsibilities should include robotic exploration necessary to support its primary mission. As did the Apollo Program, NSEA should include lunar and planetary science and resource identification as a major component of its human space exploration and development initiatives.

To organize and manage the start-up of NSEA, the experienced, successful, and enthusiastic engineering program and project managers should be recruited from industry, academia, and military and civilian government agencies. NSEA must be given full authority to retire or rehire former NASA employees as it sees fit and to access relevant exploration databases and archives. An almost totally new workforce must be hired and NSEA must have the authority to maintain an average employee age of less than 30. (NASA's current workforce has an average age over 47.) Only with the imagination, motivation, stamina, and courage of young engineers, scientists, and managers can NSEA be successful in meeting its Cold War II national security goals. Within this workforce, NSEA should maintain a strong, internal engineering design capability independent of that capability in its stable of contractors.

NSEA would assume responsibility for facilities and infrastructure at the Johnson Space Center (spacecraft, training, communications, and flight operations), Marshall Space Flight Center (launch vehicles), Stennis Space Center (rocket engine test), and Kennedy Space Center (launch operations). Through those Centers, NSEA would continue to support NASA's operational obligations related to the International Space Station. NSEA should have the authority, however, to reduce as well as enhance the capital assets of those Centers as necessary to meet its overall mission.

Enabling legislation for NSEA should include a provision that no new space exploration project can be re-authorized unless its annual appropriations have included a minimum 30% funding reserve for the years up to the project's critical design review and through the time necessary to complete engineering and operational responses to that review. Nothing causes delays or raises costs of space projects more than having reserves that are inadequate to meet the demands of the inevitable unknown unknowns inherent in complex technical endeavors.

The simple charter of the National Space Exploration Administration should be as follows:

Provide the People of the United States of America, as national security and economic interests demand, with the necessary infrastructure, entrepreneurial partnerships, and human and robotic operational capability to settle the Moon, utilize lunar resources, and scientifically explore and settle Mars and other deep space destinations, and, if necessary, divert significant Earth-impacting objects.

Is this drastic new course for national space policy and its implementation the best course to repair what is so clearly broken? Do we have a choice with Cold War II upon us, with American STEM education a shambles, with domestic engineering development and manufacturing disappearing, and with an ever-growing demand for American controlled, economically viable, clean energy?

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Note Cited in Text

1. Essays [No. 7](#), [No. 18](#), [No. 20](#), [No. 25](#), and [No. 35](#) have been revised and collected together into a special booklet entitled *Space Policy and the Constitution* with a Foreword written by Michael D. Griffin, NASA Administrator (2005-2009). The present essay forms the Preface to that booklet, which is available from the “[Downloads](#)” page of the AUS website.

47. SPACE POLICY AND THE CONSTITUTION #5

Harrison H. Schmitt
July 20, 2011

For Immediate Release

Former Senator Schmitt Reflects on America's Space Program: Past, Present and Future*

The 42nd Anniversary of humankind's first lunar landing by Apollo 11 on July 20, 2011, followed by the return of STS-135 on the next day, concluding the final flight of a United States Space Shuttle, places a capstone on the remarkable accomplishments of the post-Apollo generations of space engineers, builders and operators.

Those of us who were in attendance at the launch of *Atlantis* on July 8, 2011, felt both pride in this final accomplishment and sadness at another unnecessary, ill-conceived and excessively prolonged break in America's commitment to lead humankind in space. Pad 39A, the Vehicle Assembly Building, and the Crawler Transporter stand in the Florida sunshine as still functional but unwanted relics of past glories. Unfortunately, these momentous events also starkly frame the deficiencies in American space policy relative to long-term national interests. This policy began its slow decline in 1968-69 when the Johnson and Nixon Administrations began the process to end procurements of the Saturn V boosters and spacecraft advocated by Eisenhower and Kennedy for the Apollo Moon-landing Program.

The absence of any significant national goals epitomizes current space policy. That

policy lacks any coherent strategy to lead humankind in space and promote liberty there and on Earth. Failure of all Administrations and Congresses since Eisenhower and Kennedy to maintain a sustainable, indefinite commitment to human deep space exploration and settlement has undermined America's status in the world and the technological foundations necessary for national security and economic growth. We have reached a point where America and its partners depend on Russia for future access to the International Space Station. More critically, we will be ceding the Moon and deep space to China. This should be an intolerable situation to American taxpayers who paid for most of the Space Station and whose Astronauts blazed the trail for humankind to the Moon.

President George W. Bush provided the Nation with a space policy in 2004 that met critical geopolitical requirements. If it had been properly funded by Congress, Bush's policy would have created a replacement for the Space Shuttle by 2010 and, more importantly, provided for a return to the Moon on the way to Mars. Mr. Bush, however, did not ask Congress for the funds necessary to fully implement his Constellation Program. Constellation nonetheless could have been executed fully when President Barack Obama

took office in 2009, although with a several year delay in the availability of the Shuttle replacement spacecraft (Orion).

President Obama, however, soon canceled Constellation, reflecting his personal bias against American exceptionalism and anything identified with Bush. His visions of largely unsupervised private contractors providing astronaut transportation to space and an unproductive visit to an asteroid are just that, unproven “visions” but hardly visionary. In light of increases of trillions of dollars in recent federal government spending, the \$3 billion per year cost of implementing a “shovel ready” and “employment ready” Constellation Program appears, relatively, very small. The enormous geopolitical damage to America’s world leadership role that its cancellation has brought about will cost us dearly in the future.

Atlantis’s final arrival in Earth-orbit was historically comparable to the arrivals of the last covered wagon at Western destinations just before the Union Pacific, Central Pacific, Santa Fe and other railroads reached rapidly expanding local economies in the late 1800s. Unbelievably, and unlike the replacement of covered wagon technology with railroad technology, no American replacement exists for the Space Shuttle. Now

that Obama has made NASA largely irrelevant in America’s future, the next President and Congress must consider how to reverse this damage to national security and to the future motivation of young Americans.

The next President must seriously consider focusing United States’ space goals on deep space exploration. Until the Space Station must be shut down and deorbited, NASA can continue to be responsible for managing related international obligations. A separate and intense focus on deep space, however, could be accomplished by reassignment of most NASA functions to other agencies and the creation of a new National Space Exploration Agency (NSEA) [see Essay [No. 46](#)]. This would be a proper tribute to the sacrifices made on behalf of America by the personnel of NASA and its contractors since 1958. A clear commitment to deep space would also restore America’s geopolitical will to lead humankind into the future.

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Note Cited in Text

* Essays [No. 7](#), [No. 18](#), [No. 20](#), [No. 25](#), [No. 35](#) have been revised and collected together into a special booklet entitled *Space Policy and the Constitution* with a Foreword written by Michael D. Griffin, NASA Administrator (2005-2009). Essay [No. 46](#) forms the Preface and the present essay forms the Epilogue to that booklet, which is available from the “[Downloads](#)” page of the AUS website.

48. NATIONAL DEBT AND THE CONSTITUTION

Harrison H. Schmitt
August 15, 2011

For Immediate Release

Former Senator Schmitt Says Congress's Select Committee for Debt Reduction Is a Bad Idea and Questions its Constitutionality

Among many bad ideas out of Washington over the last century, one of the worst may be the twelve-member congressional Joint Select Committee on Debt Reduction, created by the so-called "Budget Control Act of 2011". More critically, this Committee's existence as a source of federal legislation is unconstitutional.

This "Super Committee", as the media refers to it, has been empowered by the Act to submit a bill to both Houses of Congress for an up or down vote with a goal of reducing "the deficit by at least \$1.5 trillion over the period of fiscal years 2012 to 2021." It should be noted that this non-mandatory "goal" makes up less than three quarters of the approved \$2.1 trillion increase in the deficit in just the first two years of that period. It does nothing to actually stop the deficit's growth or account for future hyperinflation. The word "Control" in the Act becomes another word for continued irresponsibility.

The empowerment of a Select Committee to produce a bill that is required by law to be voted on by Congress is a very bad idea for many reasons. For example, if the Select Committee agrees to any debt reduction plan, liberal members will insure that

there will be higher taxes and less income for Americans to create jobs and raise their standards of living. Additionally, if the Committee submits a Bill providing for any direct or indirect increase in taxes, and thereby requiring a vote of the Senate, such an action would violate Article I, Section 7, Clause 1 of the Constitution. That Clause states: "All Bills for raising Revenue shall originate in the House of Representatives, but the Senate may propose or concur with Amendments as on other Bills." The Budget Control Act of 2011 even attempts to remove the Senate's power to amend a revenue measure.

Further, if the Committee cannot agree on a debt reduction plan, automatic cuts outlined in other provisions of the Budget Control Act will occur. Most of these cuts will undermine national security at a time when radical Islam, an aggressive national socialist regime in China, and an invasion across our southern border constitute growing threats to liberty. Has Congress forgotten the constitutional mandate for the Federal Government to "provide for the common defence"? Unfortunately, the Act's severability provision means that these defense cuts will take effect even if other sections are declared unconstitutional.

Constitutionality

Just as critical to American liberty, by its mandate for time-certain action by the Congress on a Select Committee Bill that cannot be amended, the Budget Control Act effectively vests unconstitutional legislative powers in the Select Committee. This real legislative power is not negated by the facts that: (1) the Committee might not agree to a bill, and (2) either the House or Senate can vote down any Committee's Bill submitted. Legislation is legislation. Article I, Section 1, Clause 1 states: "All Legislative Powers herein granted shall be vested in a Congress of the United States which shall consist of a Senate and House of Representatives." Legislative powers rest solely with Congress and not some rump select committee whatever mandate Congress and the President may have given it. The Budget Control Act establishes an unconstitutional third House of Congress, however limited a life it has been given—a life that could be extended and enhanced by the Congress unless the Committee itself is ruled unconstitutional by the Courts.

The Act intends that the Select Committee's Bill will not, repeat *not*, be subject to amendment by either House of Congress. The Bill's consideration prior to an up or down vote before December 23 of 2011 is bounded by mandatory rules intended to prevent modification. Those rules, if adhered to, would prohibit serious debate or any amendment by the people's elected representatives much less informed analysis by the people themselves. The Constitution, however, prohibits legislative override of the rules of the House and Senate by stating in Article I, Section 5, Clause 2 that "Each House may determine the Rules of its Proceedings...". If the House, for example, does not wish to abide by the negation of its Rules by Title IV, Section 402 of this Budg-

et Control Act, it is constitutionally empowered to consider the Select Committee's recommendations by rules of its own choosing.

Strangely, the Budget Control Act contradicts its own attempt in Section 402 to impose new mandatory rules (in which the word "shall" is used, repeatedly) by stating in Section 401 that "Any change to the Rules of the House of Representatives or the Standing Rules of the Senate included in the [Select Committee's] report or legislative language shall be considered to be merely advisory." How can "legislative language" be "merely advisory" when it cannot be amended? Section 404 furthers this contradiction by inclusion of the Act's "recognition of the constitutional right of either House to change such rules...at any time, in the same manner, and to the same extent as in the case of any other rule of such House." So, can the House make a rule to allow amendments to the Select Committee's Bill or not? Which Sections of the Act will prevail when challenged within the Congress or the Courts?

What a mess! The Elections of 2012 cannot come too soon. The Federal Government's spending of Americans' incomes and its tyrannical control of American's lives must stop!

Plan of Action

What can Americans do now that the Budget Control Act has been signed into law?

First of all, Members of Congress, for whom the Act would eliminate their ability to represent constituents, should challenge the constitutionality of the Section 402 overrides of House and Senate Rules. This challenge should be filed as soon as possible and

an immediate injunction sought. These Members also should be prepared to challenge the constitutionality of any tax increases included in legislation submitted by the Select Committee.

Second, the six Republican members of the Select Committee should insist that the Committee's proposed legislation be the House's previously passed "Cut, Cap and Balance" Bill.

Third, the House and Senate should exercise their Article 1, Section 5 constitutional power to debate and amend any proposed Select Committee legislation and not be held to the arbitrary deadlines of the Budget Control Act.

Fourth, the House should pass its previously passed "Cut, Cap and Balance" Bill as an "amendment in the form of a substitute" for the entire Select Committee proposed Bill if that has not previously been accomplished within the Committee. This Amendment should include any necessary revisions of the drastic cuts in national security spending contained in the Budget Control Act.

Fifth, the House should immediately pass legislation that includes real reform of and major reductions in the future growth of all entitlements. Particular attention should be paid to Social Security and Medicare for persons under 50 years of age, subsidized housing and business activity, and federally funded health care other than that for veterans. All federal spending, not just national security, must be part of fiscal reform.

Sixth, the Conservatives in the House and Senate, with the grassroots aid of the Tea Party, immediately should begin a campaign to prevent future increases in the debt limit. A request to once again increase the debt limit probably will come early in 2013 if not sooner. Make stopping spending increases and rejection of new debt the issues of the 2012 election campaign. Time is not on our side.

As included in the Cut, Cap and Balance Bill, the real long-term solution to the debt crisis lies in a constitutional amendment requiring annual balanced budgets with protections against increased taxation except in true national emergencies. Every state government other than Vermont has such a constitutional provision for good reason. A Select or "Super" Committee that can override the Rules of Congress creates a very dangerous precedent, hinting at the way the Politburo ruled the legislature of the former Soviet Union.

Let's not just sit back and take the losses that came from the so-called "compromise" on raising the federal debt limit. Stay engaged and on offense in the battle to save liberty!

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49. SPACE POLICY AND THE CONSTITUTION #6

Harrison H. Schmitt
January 6, 2012

For Immediate Release

America's Deep Space Vision: Settlement of the Moon and Mars versus Asteroid Visits

America's eroding geopolitical stature, highlighted by the July 21, 2011, end to flights of the United States Space Shuttle, has reached crisis proportions. Obama Administration officials now spin the nebulous thought of Astronauts flying many months to an undetermined asteroid in 2025 as an actual "National Space Policy". On the other hand, Republican candidates for President have not yet recognized the importance of international civil space competition in the federal government's constitutional function to provide for the nation's "common defence". Candidates appear to be uninterested in having the United States lead deep space exploration, including the establishment of American settlements on the Moon; or may actually consider Obama's unfocused proposals as being credible rather than realizing that those proposals would transfer geopolitical dominance to China and control of American space transport to Russia.

Although the Bush Administration and Congress did not follow through with adequate funding, at least the 2004 *Vision for Space Exploration* put forth by President Bush and approved by Congress was a legitimate formulation of a National Space Policy. It implicitly recognized that America's best security interests would not be served by being dependent on Russia for access to space or by ceding to China both deep space exploration and access to space resources.

Unfortunately, with the acquiescence of Congress in 2010, President Obama cancelled what had become known as NASA's *Constellation Program* – a program designed to maintain and expand America's hard-won position as the world's leading space-faring nation. Meanwhile, China is building a major new deep space launch facility in Hainan and developing new rockets and spacecraft to take over the exploration of the Moon from the United States and the free world.

A properly funded *Constellation Program*, would have returned Americans and their partners to the Moon, begun creation of the infrastructure and operational capabilities to settle there and go to Mars and beyond, and provided a timely replacement for the aging Space Shuttle. Assuming that the Obama Administration actually requests authorization and budget authority to implement a human mission to a near-Earth asteroid (NEO), including the required heavy lift rockets, specialized spacecraft, operational infrastructure, and hiring authority, how would such a mission stack up relative to returning to the Moon?

Mars Mission Preparation

Heavy Lift Launch Vehicles & Operational Experience. Both repeated trips to the Moon and an occasional asteroid mission

require an Apollo Saturn V-class, heavy lift rocket to escape the Earth's gravity-well. Lunar exploration and an eventual commercially supported lunar settlement, however, would give a much greater, long-term return on investment of the same taxpayer dollars. Operational experience and multi-generational training gained at a Moon base or settlement is far more relevant to exploration and bases on the gravitationally similar Martian surface (3/8 gravity versus 1/6 gravity) than a mere "rendezvous and docking" with a near zero gravity asteroid.

Physiological Countermeasures. Understanding of the physiological countermeasures to space radiation exposure necessary for travel to Mars can be gained on the Moon sooner and at much lower risk with the added benefit of the future production of lunar water for radiation shielding. Of particular importance is determining whether the Moon's one-sixth Earth's gravity triggers physiological re-adaptation after astronauts experience the adverse effects of prolonged exposure to zero gravity during travel to Mars. This cannot be determined on a near zero-gravity asteroid. (The complexity and cost of physiological countermeasures on a Mars mission is critically dependent on knowing if this re-adaptation occurs in one-sixth gravity or not.)

Operational Approaches. Operational approaches for Mars landing and exploration, such as communications delays and lander concepts, can be evaluated and simulated realistically during lunar operations but not during an asteroid mission. Similarly, layered engineering defenses related to planetary biological protection and dust mitigation on Mars can be fully tested at a lunar base or settlement but not during a short visit to an asteroid. In addition, Mars atmospheric entry and descent vehicles and procedures can be tested in the low-density upper atmosphere of Earth more logically as

an adjunct to a lunar exploration and settlement program than as part of a single purpose mission to an asteroid. Entry, descent and landing by large spacecraft through the thin but operationally significant Martian atmosphere are challenges for which there currently are no known engineering solutions.

Commercialization of He-3 and other Lunar Volatiles. Commercial access to the fusion energy resource of the Moon, Helium-3, also opens the potential of interplanetary fusion rockets that would allow continuous acceleration and deceleration between Earth and Mars, thus lowering travel risk to humans exploring deep space. Further, the Helium-3 production by-products of hydrogen, oxygen, and water can significantly lower the cost and risk of deep space travel and space station resupply. A one-time visit to an asteroid provides no technically or commercially viable alternatives in this arena.

Reduction of Risk for Mars Missions. Programmatically, the transition from a lunar exploration and commercially supported settlement initiative to one focused on Mars landing and exploration would be more straightforward than a one-shot asteroid visit. Lunar exploration overall imposes much lower risk to explorers and mission success than a brief visit to an asteroid and is far more applicable to the reduction of the risks of Mars transit and exploration.

Science

Solar System History. Far more new science related to the early history of the Earth and other planets can be gained through renewed lunar exploration, sampling and analysis than similar activities related to an asteroid. Most asteroid science has been and can be gained from meteorites

and multi-spectral imaging by the Hubble and future Webb telescopes. Robotic missions to asteroids, like the Dawn spacecraft now at Vesta, can answer most remaining questions about asteroids, particularly if sample returns are implemented in the future. Finally, the history and evolution of the Sun can be investigated extensively by studies of the long-term variations in solar wind composition and effects recorded in over-lapping layers in the lunar regolith (impact-generated rock debris). Such studies would not be productive on an accessible asteroid.

Astrophysical, Earth and Solar Observatories. A far-side lunar observatory shielded from both solar and terrestrial radio noise would be a boon to observational astronomy; however, no synoptic observational science of other parts of the universe, particularly in radio frequencies, can be conducted in a practical way from an asteroid. Also, a multi-spectral polar Earth observatory at a lunar pole, with simultaneous solar observation, would establish long-term, continuous, full sphere monitoring of weather and climate as well as providing a coherent means of synthesizing more detailed but much less synoptic data gathered from near-Earth satellites. Asteroids, of course, provide no such climate, weather and atmospheric physics-related opportunities.

Resources and Commercial Opportunities

Commercialization of He-3 and other Lunar Volatiles. Terrestrially valuable energy resources, that is, Helium-3 fusion fuel and solar energy, exist on the Moon a short distance from the Earth, but are not a practical option for shipment or transmission from an occasional passing asteroid. In this regard, much is known about the commercial parameters of potential lunar resources; however, little is known about the concen-

trations, physical and chemical form, or ease of access of potential resources on NEO asteroids. Also, gravity can assist in resource extraction and processing on the Moon but not on a near zero gravity NEO asteroid. Due to communication delays, possible resource mining and processing on an asteroid must be autonomous for relatively short intervals with only periodic human command input. This is unlike resource mining and processing on the Moon where it can be continuous either by human crews or by tele-robotic operation from Earth.

Economics of Lunar vs. Asteroidal Resources. Unlike the available analyses for the energy resources of the Moon, the required financial envelope for potential commercialization of asteroid resources is completely undefined with major questions as to technical practicality. Once Americans permanently established themselves on the Moon, available lunar resources include readily accessible and relatively low cost consumables necessary for operations in space, including water, hydrogen, oxygen, helium, carbon and nitrogen compounds, and food products. Various solid elements and oxides also could support manufacturing of products for use at a lunar settlement or elsewhere in space.

Tourism. Lunar tourism will eventually become a viable commercial opportunity once launch and support costs are compatible with the heavy lift launch costs required by commercial energy production (about \$3000 per 220 pounds); whereas, asteroid tourism, as well as asteroid mining, will remain the stuff of science fiction for the foreseeable future.

Launch Opportunities and Mission Operations

Frequency of Access. For hypothetically possible missions to near-Earth asteroids

(NEOs) that cross the orbit of the Earth, very few asteroid rendezvous opportunities exist over time versus essentially continuous opportunities for the Moon. Time for human asteroid exploration will be short because of increasing energy requirement to return as the asteroid moves away from Earth. On the other hand, stay-times on the Moon have no such constraint.

“Rendezvous and Docking” at an NEO.

Because of the near zero gravity of an asteroid, an asteroid mission is a “rendezvous and docking” mission requiring very difficult operational procedures in order for astronauts to explore and sample the materials found there. Asteroids in orbit between Mars and Jupiter, such as Vesta currently being imaged by Dawn, require prohibitively long flight times for human visits until new, much more rapid propulsion technology exists.

Education

Stimulation of Learning and Ambition.

An asteroid mission would provide flight opportunities to only a few astronauts and thus limit the interest of children and young people in preparing for careers related to space and technology. In contrast, an indefinite commitment to lunar exploration and commercially supported settlement offers a permanent set of career opportunities as a stimulus to STEM education and economic innovation throughout the country. Importantly, the Moon is a destination children and young people can see with their own eyes in the nighttime sky. That sight would become even more inspiring with the knowledge that men, women and families are liv-

ing and working on the Moon as those youngsters look up to the sky...and to their futures... while other children look up to see Earth.

Leadership and National Security

Lunar exploration and settlement as a precursor to missions to Mars and beyond would be far more productive and practical than a onetime mission to an asteroid. A return to the Moon also constitutes much less risky national policy in the still risky business of deep space exploration.

All public indications are that our Cold War II adversary, China, includes space in its vision of geopolitical dominance as well as in its plans for technological, educational and energy resource advancement. China’s announced long-term space policy is focused on the Moon. The United States stands as the only viable bulwark of freedom on the planet. If the Federal Government ignores this challenge, as well as the commercial energy resources of the Moon and its role as an essential steppingstone to Mars, its constitutional duty to provide for the security of America will be fatally compromised. An asteroid mission constitutes an unacceptable diversion in our broader responsibility to future generations.

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50. ENERGY AND THE CONSTITUTION #2

Harrison H. Schmitt
January 31, 2012

For Immediate Release

Obama's Anti-Keystone Pipeline Decision: The Latest in Unconstitutional Moves in Energy Policy

Conscious and deliberate decisions by President Obama and his Administration reduce future domestic supplies of energy. These actions violate the President's constitutional mandate to "provide for the common Defence."

The withholding of approval for the development of the Keystone Pipeline to bring Canadian crude oil to refineries in the United States constitutes merely the latest in these unconstitutional moves against maintaining national security. In aggregate, Obama's restrictions on use of domestically available energy increase the Nation's vulnerability to unstable and unfriendly foreign energy sources. Simultaneously, the military and essential industries lose access to secure supplies of fuels and electricity.

Along with the anti-Keystone decision, the President and his Administration have undertaken the following policies that, in total, are unconstitutional:

1. Severe limits and regulatory delays in permitting offshore oil and gas exploration and production in the Gulf of Mexico and other offshore regions.
2. Continued administrative inaction by the Department of Interior to make the Alaskan **ANWAR** and other potentially productive public land areas accessible to oil and gas exploration, development and production.
3. No action taken by the Environmental Protection Agency to remove the regulatory hurdles preventing the construction of new domestic oil refineries that produce domestic gasoline, diesel and jet fuels.
4. Multiple regulatory actions and threats by the Environmental Protection Agency that will force the closure of many coal-fired power plants, threaten the stability of the national power grid, and increase the price of electricity.
5. Plans by the Environmental Protection Agency to limit or prevent the use of hydraulic fracturing and reservoir treatment to release abundant shale gas and tight crude oil reserves.
6. Political and ineffective releases of oil from the Strategic Petroleum Reserve that reduce its availability for crisis defense needs.

7. Termination by the Department of Energy of Federal construction of a central repository for spent nuclear fuel, forcing the eventual shutdown of nuclear power plants that now supply 20% of U.S. electricity.
8. No action taken to remove the domestic regulatory hurdles preventing the construction of modern nuclear power plants.
9. Department of Interior's withdrawal of one million more acres of Southwestern land from uranium exploration and production required to fuel future nuclear power plants.
10. Threats by the White House and Department of Interior to use illegally the Antiquities Act and other arbitrary orders to withdraw vast areas of public lands in several Western States from energy and mineral exploration.
11. No action to reverse the Clinton Administration's similar withdrawal of millions of acres of Utah's public land with great energy resource potential.
12. Using taxpayer and debt resources to subsidize economically unsound solar, wind and bio-fuel energy development and production and equally unsound passenger rail systems.
13. Forcing Americans to pay far more than necessary for transportation fuel and vehicles through excessive regulation, taxation, subsidies, unsafe automobile mileage standards, and mandated use of costly and inefficient ethanol additives.
14. No effective diplomatic efforts to secure long-term access to Iraq's petroleum exports in the context of the premature withdrawal of American forces from that country.
15. No effective diplomatic efforts, if any, to contain China's efforts to control Western Hemisphere energy resources, as well as energy transportation routes across Central America.
16. Abetting China's moves to control U.S. access to energy by regulatory limitations on domestic exploration and decisions like "Keystone" that force Canada to look elsewhere to sell its tar sand resources.
17. No assertive or effective efforts to contain the adverse consequences of takeovers or intimidation of energy-rich portions of the Middle East by new radical Islamic dictatorships.
18. No assertive or effective efforts to prevent Iran from gaining access to nuclear weapons, weapons that could effectively prevent access to all Middle Eastern energy resources as well as pose a direct danger to Americans and their allies.
19. Ceding the Moon's resources for future helium-3 fusion power to China.

The continued drawdown of the national defense programs and the armed forces through actions by the President, his Administration, and the Congress only compound these and other adverse energy and economic actions and inactions. Of particular note are anti-growth policies that lead to higher tax rates, increased financial and environ-

mental regulation, and inflation stimulated by artificial expansion of the money supply.

The constitutional mandate for a rational and scientifically and economically sound national energy plan lies in energy's close modern relationship to the Federal Government's mandate to "provide for the common Defence" found in the Preamble and Article I. These provisions are reinforced by the Article II designation of the President as Commander in Chief and an Oath of Office that requires the President to "preserve, protect and defend of the Constitution".

Both near and long-term national security options are limited by projected increases in our dependence on foreign sources of oil. That dependence also creates an economic burden on our struggling economy that restricts the liberty of Americans, their 9th Amendment guarantee of the pursuit of happiness, as well as their ability to respond to crises of all kinds.

Dependence on imported oil gives existing and potential adversaries leverage to control our defense and foreign policies. Additionally, imports subsidize both the financial supporters of terrorism and, through additional national debt, our major economic and security adversary, China.

Dependence has the further effect of giving the United States no influence over the price it pays for oil. If the price of oil came under the direct economic influence of the United States through use of abundant domestic and Canadian resources, for example, Iran would have great difficulty affording the development of nuclear weapons and their delivery systems.

Dependence on oil and gasoline imports that are vulnerable to attack at sea also gives China further means to intimidate our na-

tional leaders into acquiescence to its continuing ambition for international dominance. China's rapidly growing economy, fueled by U.S. debt, has a major influence on world energy supply and cost, competing directly with our needs. Additionally, that country's growing conventional and asymmetric military capabilities directly threaten our sources of energy.

Cold War II has begun; however, it is being fought on an economic and energy front as well as through military capabilities. Relative to its geopolitical influence, China's rapidly developing space capabilities and its expressed interest in lunar helium-3 energy resources cannot be ignored [See Essay [No. 49](#)].

Many varied elements are necessary to a long-range national, free market plan that would ultimately provide for energy independence and a more stable economy. A scientifically and economically based, long-range strategy also would provide far more benefit to the preservation of the environment and natural resources than possible today [See Essay [No. 44](#)]. The absence of such a strategy has led to a national security crisis through progressively increased dependence on foreign sources of oil and restrictions on use of North American coal, tar sand, natural gas, and uranium resources.

The "common Defence" provisions of the Constitution require that the next President and Congress have a concerted and immediate focus on energy independence as well as on reducing spending and debt. No choice remains other than capitulation to the economic, military and terror intimidation of the enemies of liberty.

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51. CLIMATE AND THE CONSTITUTION #9

Harrison H. Schmitt
April 5, 2012

For Immediate Release (see related releases Nos. [10](#), [29](#), [30](#), [31](#), [32](#), [33](#), [34](#) & [37](#) of February 22, July 2, 14, 19, 23, 26, August 10, and October 16, 2010)

Former Senator Schmitt Summarizes the Major Constitutional Limits on Climate Change Policy

The Constitution of the United States of America sets clear limits on the powers of the Federal Government and permits exercise of those powers only in specifically enumerated activities that relate to providing for the “common defence”, promoting the “general Welfare”, and securing “the Blessings of Liberty” to all Americans and future Americans. The first ten Amendments to the Constitution, and the 14th Amendment, further limit the powers of Federal and State Governments relative to the rights of the people, leave to the people those natural rights not specifically protected, and reserve all un-enumerated powers to the States. Other Amendments expand the powers of the Federal Government but, again, only within specified limits.

Article V defines the process by which constitutional powers can be changed and the rights and liberties of the people possibly further limited. The Constitution defines no process that allows any of the three branches of the Federal Government to change their powers or the rights of the people without a constitutional amendment. Unfortunately, over many decades, the amendment process of Article V has not been followed in the determination of many extra-constitutional national legislation, executive actions, and Court decisions. Rather, there have been as-

sumptions of non-enumerated powers by all three branches of Government.

In analyzing the Constitution, it is critical to recognize the clear requirement in the Preamble and Article I to “provide for the common Defence and the general Welfare”. Meeting this requirement demands ready access to abundant energy in order to have a strong economy that can support national security and other constitutional functions of Federal, State, and local government. Unconstitutionally limiting energy production and taxing carbon emissions to “do something about climate change” would clearly adversely affect the economy and thereby limit the Nation’s ability to counter potential adversaries or direct attacks and provide for the general welfare.

Actions related to modification of “climate change” clearly are not included within the directly enumerated powers of Congress given in Article I, of the President in Article II, or of the Judiciary in Article III. Therefore, the question arises as to whether such actions can be constitutionally justified or invalidated under various enumerated powers or within the Amendments that protect political and natural rights. In answering this question, the constitutional powers of the three branches of Government must be con-

sidered relative to permissible law, regulation, executive order, or judicial decision. Similarly, the relevant rights guaranteed by the 5th, 9th, 10th and 14th Amendments also must be reviewed.

Legislative Power: Clauses 2 through 17 of Article I, Section 8, lay out the specific limits on Congress's power to undertake the duties stated in Clause 1 of that Article. Nothing in those sixteen Clauses, directly or indirectly, gives the Congress the power to attempt to regulate climate, assuming that Nature would permit such regulation to be effective. Where commerce between the States in energy, transportation or industry needs to be regulated to prevent economic discrimination between those States, Congress has the power to do so under Clause 3, the "Commerce Clause". To extend such regulation in an attempt to affect climate, however, would have no constitutional basis.

Some would argue that Clause 18 permits Congress to legislate in any way it deems "necessary and proper"; however, this phrase, in specific words, applies only to the "Execution of the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof." Clearly, no extra-constitutional powers, such as attempts to regulate climate, can be assumed by the Congress by way of Clause 18.

Executive Power: Article II gives significant executive power to the President, but in no way gives that Office legislative authority beyond that wielded by the Congress in which the President participates by signature or veto. In fact, the President's Oath of Office specifically requires that the President "preserve, protect and defend the Constitution..." and thus requires a veto of any legis-

lation that is unconstitutional on its face. Further, any Executive Order by the President must be limited to the management of the Office of the President or to the implementation of the responsibilities of Executive Branch Departments and Agencies as defined by the Constitution or by Acts of Congress. Executive Orders are explicitly unconstitutional if they have no tie to constitutional Acts of Congress or violate the rights of individual Americans or the States as defined by Amendments to the Constitution. No Executive Order that attempts to mandate actions relative to climate, therefore, would be constitutional.

Executive Order 13524, for example, issued October 5, 2009, by President Obama, requires that Federal agencies set "sustainability goals" for their use of energy. This order would be constitutional if its stated purpose were to reduce the cost of the Executive Branch operations through cost-effective energy related operations; however, the stated primary purpose of the Order is "to establish an integrated strategy towards sustainability in the Federal Government and to make reduction of greenhouse gas emissions (GHG) a priority for Federal agencies." This is a purpose for which the President has no constitutional authority to implement. In addition, it is well documented that a reduction in carbon emissions by means other than employing under-utilized technology of enhancing fossil fuel combustion and conversion efficiency will not net cost savings and will lead to greater costs of government. The Order also states that Order 13524 is "intended as a means to create a clean energy economy" and to "foster markets for sustainable technologies and environmentally favorable materials, products, and services". This is an industrial policy purpose for picking economic winners and losers for which there is no constitutional basis.

Regulatory Agencies: The Environmental Protection Agency (EPA) has no direct constitutional foundation for existing because “environmental regulation” is not an enumerated power of Congress or the President. The 10th Amendment leaves all unenumerated powers to the States without equivocation. A State, therefore, with the implicit consent of the electorate in that State and with solid scientific justification, can regulate activities that affect the environment within the borders of that State. If activities in one State adversely affect the environment in another State, and the issue cannot be resolved between the two parties, then Article III, Section 2, provides for recourse to Federal Courts, stating that “The judicial Power shall extend...to Controversies between two or more States;...”

There exists a strong argument that under the Commerce Clause of Article 1, Section 8, Congress can provide for regulation of interstate commercial activities for which there is strong scientific evidence of potential harm to the health and safety of Americans arising from those activities. Some of the few examples of such harm come from excessive release of Mercury, Lead, Arsenic, radiation and some artificial chemicals into the environment. The critical scientific issue in these and all cases of potential harm lies in the dose received by individuals. The key to any environmental regulation is “strong scientific evidence of potential harm to health and safety” and the balancing of the benefit of the regulation against its full economic cost and its infringement on the constitutional rights of the people. These constitutional rights, of course, include the inherent natural rights protected by the 9th Amendment [1]. With respect to the EPA’s moves to regulate the use of fossil fuels in the name of fighting global warming, as discussed in previous Chapters, there is no strong scientific basis that such regulation

can significantly counter natural warming or cooling cycles.

Similarly, the Department of Energy (DOE) has no constitutional basis for attempting to affect commercial decisions through its subsidies for solar, wind, battery and bio-fuel energy production. Again, industrial policy is not an enumerated function of the Federal Government. As with regulations promulgated by the EPA, DOE’s authority to provide such subsidies is supported by partisan political rationales rather than engineering and economic reality. Federally funded research and technology development in these significantly non-economic areas of energy conversion can be justified by their potential long term tie to national security [2] in relation to future depletion of currently much more economic and more environmentally friendly North American fossil and nuclear energy production [3].

Regulatory mandates by the Federal Government, including the Executive Branch, that artificially raise the price of goods and services indirectly and unconstitutionally manipulate industrial policy and introduce damaging non-market forces into private decision making. For example, the President and the Secretary of Energy have expressed a clear Administration policy to raise the price of fuel and energy derived from fossil fuels through increased fuel taxes; mandated additives, such as ethanol; mandated unscientific emissions controls, such as to reduce emissions of carbon dioxide and infinitesimal amounts of Mercury; and the imposition of regulatory requirements for power companies to distribute minimum amounts of wind and solar generated electrical energy. These policies, of course, mean that the price goes up on food, trucks and cars, and everything else that needs energy to be produced.

The President's and the Secretary of Energy's decision to not uphold the Federal Government's legal and constitutional responsibility to reprocess or dispose of spent nuclear fuel rods, a need for which power companies continue to be taxed, clearly is aimed at eventual closure of all U.S. nuclear power plants. This decision, along with the closure of many existing coal-fired power plants by regulatory fiat, poses a grave threat to the stability of the national electrical power grid and to the future economic health of the country and the livelihoods of its citizens.

Judicial Power: Decisions by the Supreme Court, outside the resolution of apparent conflicts within the wording and intent of the Founders, best illustrate the assumption of non-enumerated powers by Government. The Court has frequently "amended" the Constitution to insert the Federal Government into issues reserved to the people by the 9th Amendment or to the States by the 10th Amendment. Both the Legislative and Executive Branches, however, also routinely ignore constitutional limits on their powers. Cases in point are the expansion of the enumerated limits on the general welfare provision of Article I (Section 8, Clause 1), particularly with respect to property rights; over interpretation of the meaning of the "Commerce Clause" (Article I, Section 8, Clause 3); and delegation and lack of oversight of the powers to regulate use of or dispose of public lands (Article IV, Section 3, Clause 2).

Through the last two centuries, the Supreme Court has assumed far greater power than intended by the Founders. Most seriously, the Court has substituted its decisions for the constitutional amendment process provided by Article V and, in so doing, has given the Federal Government powers not enumerated in the Constitution and therefore

left to the States by virtue of the 10th Amendment. The Court also has expanded legislative, executive and judicial powers beyond the obviously restrictive intent of Articles I, II and III, respectively. For example, the Court's 2007 decision to allow the Environmental Protection Agency to regulate production of a natural atmospheric gas, carbon dioxide, essential to life on Earth, clearly expanded the EPA's powers beyond the intent of Congress or what would be constitutionally permissible.

In addition, the current deliberations relative to the constitutionality of a mandate that Americans must purchase health insurance highlight how the "Commerce Clause" has been amended by Court decisions to mean far more than the narrow intended purpose "To regulate Commerce...among the several States..." Specifically related to the scientifically misguided efforts to affect climate, the legislative or regulatory mandates for Americans to use particular products, such as ethanol in gasoline or a specific type of light bulb, attempt to expand the power of the Commerce Clause in the same way as the now contested health insurance mandate.

5th Amendment: The 5th Amendment's guarantee that "No person shall...be deprived of life, liberty, of property, without due process of law..." has been violated by the many mandated or prohibited actions that unnecessarily and unscientifically regulate the otherwise free exercise of individual liberty and the use of private property. Examples abound and grow day by day: the legislated phase-out of incandescent light bulbs in favor of less desirable and dangerous fluorescent bulbs; regulated property-use restrictions based on unscientific definitions of wetlands; and regulated mileage standards that restrict access to desired personal transportation.

9th Amendment: The 9th Amendment protects the natural rights of the people that are not otherwise enumerated in the Constitution and its Amendments. These natural rights include “life, liberty, and the pursuit of happiness”, as mentioned specifically in the Declaration of Independence, and other rights derived from our natural, and societal instincts as free human beings. Other natural rights include free association, education, travel, work, communication, thought, privacy, property, shelter, and defense of self and family. In addition to their basic unconstitutionality as discussed above, attempts to control the behavior of Americans in a fruitless effort to control climate change violate most of their natural rights.

Overall, pernicious and unjustified regulation restricts “liberty”. Direct and indirect costs transferred to individuals by the regulation of carbon dioxide as a pollutant stand in the way of “the pursuit of happiness”, in other words the exercise of economic liberty. Federal grant processes and educational publications biased in favor of research on human-caused global warming corrupt both “education” and the science necessary to support legitimate national needs. Otherwise affordable “travel” is limited by unscientific and costly requirements on vehicle fuels and performance. “Work” options are lost as unjustified regulatory burdens force closure of power plants and agricultural and other businesses. Political browbeating of those skeptical of the human-caused global warming hypothesis clearly attempts to restrict “thought” as well as free scientific and political speech. Taxes, fees and regulatory costs in support of unproven climate science destroy “property” in the form of individual wealth. As a final example of 9th Amendment violations related to misguided climate policy, so-called green building requirements make individually owned “shelter” unaffordable for many Americans.

10th Amendment: The 10th Amendment leaves to the States, and thus to the people, those powers not enumerated as available to the Federal Government. This particularly applies to the powers of Congress addressed specifically in Article I. For example, nowhere in Article I is Congress given power to regulate climate and environment, energy, health, retirement, housing, welfare, transportation or many more of the areas in which the Federal Government has assumed authority. Regulation of any aspect of these areas, but still under the restrictions imposed by the Bill of Rights and the 14th Amendment, can come only indirectly through Section 8 Clauses related to commerce and defense and through the powers given Congress in Article IV related to guarantees made to the States and the management of United States territory.

14th Amendment: Whatever constitutional justification may support it, any legislation passed by Congress and signed into law by the President that provides federal monetary, tax credits or penalties, or mandated use subsidies for some individuals and entities and not others in a particular competitive area of commercial activity violates the 14th Amendment’s guarantee of “...equal protection of the laws.” Of particular note are subsidies given to energy sources that are not economically competitive with fossil fuels and nuclear power made in the name of altering trends in climate change, such as subsidies for bio-fuels, wind and solar electric power, and battery and hydrogen powered transportation. A constitutional case for such subsidies could be made from a national security perspective only if the country did not have the capacity to produce sufficient fossil fuel and nuclear energy to satisfy defense and economic requirements.



All in all, the overt and covert climate and energy initiatives of the Federal Government pose a clear and present danger to the economic future and national security of the United States. These initiatives stand in clear violation of the intent of the Founders and the constraints on the imposition of tyranny that they provided in the Constitution.

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52. HEALTHCARE AND THE CONSTITUTION #4

Harrison H. Schmitt
July 9, 2012

For Immediate Release

Former Senator Schmitt Advocates Continued and Specific Constitutional Challenges to Obamacare's Nationalization of Healthcare

The “Patient Protection and Affordable Healthcare Act of 2010” (Obamacare) and many of its specific sections remain unconstitutional in spite of the recent Supreme Court decision in *National Federation of Independent Business v. Sebelius*. The Constitution is what it is; no Supreme Court decision can legitimately amend that fundamental document. The Amendment process remains as defined in Article V. Neither Article III (judicial power) nor *Marbury v. Madison* (Supreme Court determines constitutionality) gives the Court comparable amendment power. Nor does Article III confer the legislative power to the Court it assumes in changing an Act of Congress to read that a “penalty” is a “tax” and not a penalty.

The “Opinion of the Court” on Obamacare declares that the “individual mandate” to purchase health insurance or pay a penalty to the Internal Revenue Service creates a “tax” rather than an otherwise unconstitutional expansion of the Commerce Clause of Article I, Section 8. Section 8, Clause 1, gives Congress the “Power to lay and collect Taxes, Duties, Imposts and Excises”. Elsewhere, the Constitution defines two forms of “Taxes” that Congress can levy as follows: “Capitation, or other direct, Tax” if “Proportional to the Census or Enumeration” (Section 9, Clause 4); and “in-

comes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration” (Article 16).

The Constitution nowhere enumerates that Congress can impose a tax on an American for not taking some action, in this case, for not buying insurance. The Founders would have recognized that such a tax would give the Federal Government unlimited power to restrict individual liberty. They had seen this abusive use of taxing power before with Parliament's 1766 “Stamp Act” and 1773 “Tea Act”; successfully fought a Revolution against such power; and specifically crafted the Constitution to limit the taxing power of Government. As James Madison put it, “...it is to be remembered that the general government is not to be charged with the whole power of making and administering laws. Its jurisdiction is limited to certain enumerated objects.”

The Constitution of the United States enumerates no right to health or healthcare. Thus, on its face, Obamacare in its entirety is unconstitutional. Rather, preservation of health clearly lies with the people within the powers not enumerated as those of the Federal Government. The 9th and 10th Amendments, relative to such unenumerated powers, clearly give the people,

or through them, the States control of healthcare. The “unalienable rights” stated in the Declaration of Independence include “life” as well as “liberty and the pursuit of happiness.” “Life,” however, implies something very different than “health.” The right to life coexists with the “liberty” of individual choice of how life shall be lived in “the pursuit of happiness.” Further, the 10th Amendment gives the people or States and not Congress control of health policy.

Current Senate leadership, the President, far too many business cronies, and now five Justices of the Supreme Court remain intent on the impossible task of managing the 16 percent of the American economy we call “healthcare.” They argue that Congress’s power to “provide for the...general Welfare” found in Article I, Section 8, Clause 1, permits any form of federal legislation. The full Article I phrase, in fact, reads, “provide for the common Defence and general Welfare.” Following Clauses limit the specific powers of the Congress in regard to the common defense and general welfare, but none give Congress power to do anything it decides is politically or ideologically expedient. This “general welfare” phrase also must be viewed in the context of the more inclusive phrase “*promote* the general welfare” in the Preamble to the Constitution. That phrase in the Preamble sets out one of several basic reasons for the establishment of our form of government, and it subordinates the Article I Congressional power to other constitutional provisions. Of particular note in this regard are (1) the lack of any Section 8 enumeration of healthcare among other specifically stated areas for possible Congressional intervention and (2) the combined effect of the 5th and 14th Amendments that make unconstitutional the legislative imposition of reward or penalty on some and not on others, thereby depriving those others of “equal protection of the law.”

Some lawyers state that Article VI, Clause 2, the so-called Supremacy Clause, provides that federal law always trumps state law. Basically, this position maintains that the Congress, with the agreement of the President, can override any State law. The Founders would not have agreed [Essay 24]. The relevant portion of the Clause actually reads, “This Constitution, and the Laws of the United States which shall be made in Pursuance thereof...shall be the supreme Law of the Land...” The underlined phrases clearly indicate that only the Constitution and federal law made by virtue of Congress’s enumerated powers are supreme; however, those laws enacted by the States under their 10th Amendment powers lie beyond the reach of federal law so long as State laws honor the constitutional rights of the people.

In addition to the unconstitutionality of mandating health reform by selective prohibition and regulation, specific provisions of Obamacare add constitutional insult to injury and should not be part of any legislation. One provision, Sec. 5210 for example, raises a “Regular Corps and a Ready Reserve Corps” ostensibly for the dubious purposes of meeting “both routine public health and emergency response missions”. This “Obamacare Army” would be under direct command of the President and independent of the Department of Defense, the National Guard, or local enforcement agencies. Thirty-five million dollars were authorized for training this new army in fiscal years 2010 and 2011, and an additional \$52.5 million have been authorized for the next 3 fiscal years. Other provisions, enumerated further below, violate several Amendments to the Constitution, specifically, equal protection (5th and 14th), due process (5th), warrantless searches for papers (4th), criminal prosecution rights (6th), and the right for patients and physicians to associate (9th). Thus, the

“individual mandate” constitutes only the tip of the iceberg toward which American liberty is being steered.

Insurance Mandate: Congress has no specific or general welfare power under Article I, Section 8, to mandate that all Americans use their incomes to purchase anything, much less health insurance. Nor can the power of Congress to regulate interstate commerce under Clause 3 provide constitutional justification for federally regulated insurance unless it requires States to allow insurance companies to compete across state lines. Even then, regulation must be restrained to regulation of actual interstate “commerce” and not include unconstitutional mandates on the insured. Note that nothing in the “Opinion of the Court” relative to Obamacare limits Congress from trying again to extend the Commerce Clause to cover individual decision-making. The Chief Justice only expressed an opinion on this subject, an opinion not shared by the four liberal Justices who otherwise joined in the Opinion of the Court.

To make matters constitutionally worse, under Obamacare, those who do not wish to purchase insurance would be deprived of equal protection under the 5th and 14th Amendments. Further, the mandate would confiscate private property (money) without just compensation as also required under the 5th Amendment. Nor can a State mandate the purchase of insurance due to the same restrictions of the 5th and 14th Amendments.

Criminalization of Non-Compliance: Criminalization of both an individual’s lack of health insurance and the purchase of health insurance above a government imposed limit violates the 6th Amendment without providing for the extensive and far-reaching protections required for “all criminal prosecu-

tions.” Now, as a result of the Supreme Court *NFIB v. Sebelius* decision, the unelected bureaucrats and agents of the IRS will enforce this unconstitutional prosecution of non-compliance.

Prosecutions: Obamacare requires that private contracts between patient and insurer contain specific mandated coverage, violating the 4th Amendment right of the people “to be secure in their...papers...against unreasonable searches and seizures...”. Without a constitutionally valid warrant, the government has no constitutional power to access what is in a contract (paper or oral) between an American and his or her insurer.

Tax Increases: Obamacare imposes new sales taxes disguised as excise taxes on a targeted few producers, sellers, individuals, and families to subsidize insurance for others and to cover the vast administrative costs of government healthcare bureaucracies. These taxes will be passed on to some consumers as de facto sales taxes, violating, both directly and indirectly, equal protection under the 5th and 14th Amendments. In addition, under neither Article I nor the 16th Amendment, does there exist constitutional justification for an actual federal sales tax on visits to tanning salons. If allowed to stand, this specific sales tax could be used as a precedent for more such unconstitutional taxes. Further, the law applies a “before sale” sales tax if an individual or a company does not buy health insurance for themselves or their employees, respectively. This category of sales tax effectively constitutes a fine and runs afoul of the “due process” clause of the 5th Amendment, as the Obamacare new law provides no administrative or judicial appeal process.

Moreover, the Healthcare and Education Reconciliation Act of 2010, Sec. 1411, imposes a 3.8% tax on the net gain from the

sale of any disposable private property or on any net investment income beginning in 2013. This tax is in addition to any capital gains tax.

Free Association: Obamacare tramples the rights to privacy and free association protected by the 9th Amendment [Essay 36] by inserting government review and control between a private patient and his or her doctor. The 9th Amendment states, “The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.” The “certain rights” referenced by this Amendment, clearly include those specified in the Bill of Rights. Those “others retained by the people” logically would embrace all naturally encompassing, or intensive, human rights of a free people, for example, the “unalienable rights of life, liberty, and the pursuit of happiness,” identified by the Declaration of Independence. Other such intensive rights include free association, as well as privacy, education, travel, communication, and thought, in other words, rights that inherently belong to humans as a species. Activities like seeking healthcare clearly would **not** be included as a “right” as they relate only to voluntary human activity in support of an intensive right to life.

Mandated State Benefit Exchanges: The new law requires States to create and regulate health benefit exchanges to oversee insurers’ allocation of benefits to subsidized patients. Absent State action, the federal government would set up and manage an exchange for the State. This coercive mandate on the States violates both the nature of the federal system of government envisioned by the Founders and the specific rights of the States and the people spelled out in the 10th Amendment.

Insurance Companies as Utilities: Directly and indirectly, Obamacare herds insurance companies into a stable of public utilities. In so doing, Congress not only illogically assumes that insurance constitutes a natural monopoly, like a local power company, but fails to provide for a market rate of return to the companies and their shareholders. The law would limit insurers as to what could be included in premiums as administrative costs rather than allowing the inclusion of actual costs. At the same time, the government would establish minimum standards of care over which the “insurance utility” would have no cost control, administrative or otherwise. In addition to the economic lunacy of this charade, the unconstitutionality of the provision lies in the 5th Amendment’s right of persons (shareholders) not to have “private property be taken for public use without just compensation.”

Limitation on Drug and Device Costs: Obamacare also directly and indirectly mandates limitations on the costs of medical drugs and devices. Without the ability to recover the costs of development, testing, and regulatory approval, drug and device companies will be unable to continue vigorous research and development efforts that potentially benefit everyone. Congress has no enumerated constitutional power to impose restrictions of this nature on selected private entities, either in Article I or under the equal protection mandate of the 5th and 14th Amendments.

Restrictions on Religious Liberty: Regulations issued under Obamacare mandate that employers offer health insurance plans that provide coverage of services related to contraception, sterilization and abortion-inducing drugs. “Employers” would, of course, include church-based entities for which such mandatory plans would be in direct contradiction of religious beliefs,

teachings and conscience. As should all other unconstitutional provisions of Obamacare, these regulations are being challenged in Federal Court, in this instance by Catholic dioceses and related organizations throughout the United States, as a direct violation of the 1st Amendment. That Amendment states that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...” All organized religion should be concerned about this direct violation of the Bill of Rights.

The Constitution remains America’s primary defense against the usurpation of liberty in the name of “national healthcare reform.” Remember, Germany’s descent into national socialism began with the imposition of national healthcare under Bismarck in the 1880s [Essay 16]. The States must accelerate their 10th Amendment defenses against the imposition of federal regulatory mandates in areas of governance not enumerated in Article I or elsewhere in the Constitution. At the same time, individuals, businesses, and associations must challenge the constitutionality of federal jurisdiction over healthcare as well as question specific provisions of Obamacare.

On the other hand, the empirical bounds of the Constitution include everything necessary for Americans to have superior healthcare choices and delivery. To accomplish this goal, Americans only need to have broadly applicable income tax deductions for health insurance, and insurance providers need to be able to compete across state lines. Lower cost, competition-driven insurance coverage then could be purchased and tailored to individual needs, including income levels, pre-existing conditions, home health care, hospice care, and so on. Congress could further lower healthcare and insurance costs by requiring that the Courts limit tort awards in alleged malpractice cases to actu-

al, provable damages. Additionally, Congress should require that the loser in liability suits pay court costs and that attorneys bringing frivolous or fraudulent suits be fined substantially and/or disbarred.

Specific legislative provisions now enacted in the Patient Protection and Affordable Care Act of 2010 and its companion Health Care and Education Reconciliation Act should be contested in court, one by one. We must assume that the Federal Court System’s commitment to judicial re-writing of the Constitution has not gone so far that these challenges will prove futile. The alternative is a loss of the rule of law upon which a representative democracy ultimately depends.

Americans must stay forever on guard in the protection of both their liberty and specific Constitutional limitations on governmental power. The election of 2012, with a change of Presidents and large conservative majorities in the Congress, would permit full repeal of this massive intrusion into American liberties along with the removal of the blade of massive tax increases that hangs over the head of private growth and job creation.

Elements of the current essay have been revised from [Essay 9](#) of February 15, 2010 and [Essay 17](#) of April 7, 2010.

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53. FOREIGN POLICY AND THE CONSTITUTION #4

Harrison H. Schmitt
December 23, 2012

For Immediate Release

Former Senator Schmitt Notes the Strategic Importance of Exploration to America

Major national milestones have occurred with the recent passing of Neil Armstrong, the first man to step on the Moon, and this month's 40th Anniversary of Apollo 17, America's last mission of exploration to that small planet. They provide an opportunity to examine how great ventures play a strategic role in the growth and survival of the United States.

At critical times, America's national leadership, including Congress under its treaty and funding powers, has actively recognized the strategic importance to the "common Defence" of major geographic expansion, exploration or technological development. The 1803 purchase of the Louisiana Territory from France, initiated by President Thomas Jefferson, constituted the first of these fortunate undertakings by a new nation. Jefferson, a scientist himself, dispatched the Corps of Discovery Expedition under the command of Meriwether Lewis and William Clark to explore these new holdings. In addition to thwarting the ambitions of other global powers, this exploration began the assimilation of Western resources and opportunities into the future of the country.

President James Polk and Congress followed Jefferson's lead with the 1845 annexation of Texas and the 1846-48 acquisitions

of California and the New Mexico and Oregon Territories. Polk's remarkable accomplishments in a single term effectively completed the geographic definition of what would become the 48 contiguous States of the United States of America. The final southern boundary in Arizona and New Mexico came soon after with the Gadsden Purchase in 1853-54 under President Franklin Pierce. The early exploration of these rich lands fell to the engineers and scientists of the Army Corps of Topographical Engineers. Attached to Army expeditions traveling through the American West and Southwest, explorers such as John C. Fremont and William H. Emory documented the natural resource and agricultural value of Polk's decisions. All Americans hoping to improve their lives and those of their families now had more opportunities to do so through settlement and economic growth.

Then, in the midst of the challenge of preserving the Union, President Abraham Lincoln showed Americans that he also understood the strategic importance of national expansion and development. In 1862, Lincoln initiated the building of the Transcontinental Railroad and the accompanying transcontinental telegraph, adding geographic, economic and political strength to the Northern cause. As Lincoln originally intended, the Golden Spike that formally

joined the Central and Union Pacific Railroads forever tied together the culture, economics, and agricultural and mineral resources of the country. Following Lincoln's assassination and before the completion of the Transcontinental Railroad, President Andrew Johnson supported Lincoln's Secretary of State, William Seward, in the purchase of Alaska from Russia in 1867. Seward's opportunistic foresight has long paid dividends both in natural resources and strategic defense.

As in the case of the Transcontinental Railroad, the necessities of national defense and the expansion of trade and commerce led President Theodore Roosevelt to take actions that led to the construction of the Panama Canal. Even though the Canal did not directly involve the continental United States, Roosevelt had recognized the strategic importance of moving naval units and commercial shipping quickly between the Atlantic and Pacific Oceans. As the demands of two World Wars demonstrated, this clairvoyance paid great dividends in preserving democracy throughout the globe. It also stimulated the development of many new technological capabilities, such as large earth-moving machines and electric motors that contributed to the growth of the American economy and the wellbeing of people throughout the world.

In the 1950s, the oceans again drew the attention of Presidents and the Congress. Harry S. Truman and Dwight D. Eisenhower, with congressional acceptance of their recommendations, began and expanded the Nuclear Navy starting with the USS Nautilus. These initiatives recognized the potential of nuclear submarines and their missiles, hidden in the vastness of the oceans, to deter the aggressive ambitions of the Soviet Union.

Finally, also in the post-World War period, national security drove America's most recent expansion, this time away from the global confines of Earth and into space. The six landings on the Moon in the 1960s and 70s grew out of the realization by both President Eisenhower and President John F. Kennedy that space would be a critical arena of Cold War competition between freedom and socialism.

A year and a half before President Kennedy would set the Nation on a course to the Moon, Eisenhower directed NASA to begin the development of what became the Saturn V Moon rocket. Without a jumpstart on development of the Saturn V, my generation could not have met Kennedy's goal of "landing a man on the Moon and returning him safely to Earth" before the end of the decade of the 1960s. Such a delay would have emboldened the Soviet Union to continue to press forward with its own Moon landing program.

Critical threats coincided with the initiatives taken by American leaders through the centuries. No less critical national and international threats exist today. The current strategic interests of the United States require its political leadership to recognize the imperative of regaining the lead in deep space exploration if American global influence is to remain relevant here on Earth. Deep space exists as the continuing geographic frontier for Americans and, indeed for humankind.

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Endpiece: Apollo 17 Astronaut Harrison H. (Jack) Schmitt, an American Hero a very long way from home. The pose, although deliberate, was a lucky accident. Gene Cernan, seen mirrored in Jack's gold visor, held the Hasselblad camera down and at arm's length hoping that the flagpole hanging bar would point the American flag homeward bound towards the Earth. A portion of the Moon can be seen behind Jack and in his visor. This mission concluded America's first great human exploration of our nearest neighbor in space nearly 40 years ago (NASA Photo).



Harrison H. Schmitt, today. (© H. H. Schmitt)

Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Section. 2. The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall on Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.

Section. 3. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

Section. 4. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion, and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

Article. V.

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year one thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

Article. VI.

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

Article. VII.

The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.

The Words "the" being interlined between the seventh and eighth Lines of the first Page, the Word "Party" being partly written in an Erasure in the fifteenth Line of the first Page, the Word "is" being interlined between the thirty second and thirty third Lines of the first Page and the Word "the" being interlined between the forty third and forty fourth Lines of the second Page.

Done in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven and of the Independence of the United States of America the Twelfth In witness whereof We have hereunto subscribed our Names.

attest William Jackson Secretary

| | | | |
|----------------|--|---------------|--|
| Delaware | George Read Gunning Bedford jun John Dickinson Richard Bassett Jacob Beardsley James Wilson | New Hampshire | John Langdon Nicholas Gilman |
| Maryland | Samuel Chase | Massachusetts | Nathaniel Gorham Rufus King Wm. Saml. Johnson |
| Virginia | George Mason Jr. | Connecticut | Roger Sherman |
| North Carolina | Wm. Blount Richd. Dobbs Spaight H. Williamson | New York | Albany Hamilton Wm. Livingston |
| South Carolina | Charles C. Pinckney Charles Pinckney Pierce E. G. Little | New Jersey | Daniel Vreeland Wm. Paterson Jonas Dayton |
| Georgia | William Few Abner Nash | Pennsylvania | Thomas Mifflin Robert Morris Ja. Clymer Thos. Fitzsimons Saml. Ingham James Wilson G. W. B. Morris |