

11. LOAN GUARANTEES AND THE CONSTITUTION

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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 unsupported 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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