

25. EDUCATION AND THE CONSTITUTION #4

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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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