

## 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.

\*\*\*\*\*

*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.*