38. CONSERVATIVE CONGRESSIONAL AGENDA AND THE CONSTITUTION #1

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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 constitutional 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.