39. CONSERVATIVE CONGRESSIONAL AGENDA AND THE CONSTITUTION #2

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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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