

## 40. CONSERVATIVE CONGRESSIONAL AGENDA AND THE CONSTITUTION #3

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### FORMER SENATOR SCHMITT URGES CONSERVATIVE PRESSURE ON OBAMA: PHASE III – JUDICIARY, CLIMATE, IMMIGRATION

**JUDICIARY:** The continued packing of the American judiciary with judges that do not believe in constitutional law must stop. Senate Republicans have generally acquiesced to the Senate confirmation of Presidential nominations of federal judges, Attorneys General, and U.S. Attorneys. The new Senate Conservative Leadership must no longer agree to move any Court, Department of Justice, or U.S. Attorney nominees forward who have a record of disrespect or contempt for the Constitution.

A continuous and public case also must be made that the American justice system must be founded on support of the Constitution and the intent of the Founders. For those federal judges that persistently make decisions that fall outside the Constitution's limitations and guarantees, the House should initiate impeachment proceedings. Well-documented cases against such judges on constitutional grounds would go a long way toward making adherence to constitutional law a hallmark of the federal justice system.

As further constitutional guidance to the justice system as a whole, the new Congress should state by House and Senate Resolutions how it interprets various provisions of the Constitution applicable to new law. For example, the politically motivated lawsuit filed by the Federal Government against the

2010 immigration enforcement law of the State of Arizona assumes that Article VI, Clause 2, the so-called Supremacy Clause [24] of the Constitution, always allows federal law to trump State law. Basically, this position maintains that the Congress, with the agreement of the President, can override any State law. The Founders would not have agreed. The relevant portion of Clause 2 actually reads, "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof...shall be the supreme Law of the Land..." The underlined phrases clearly indicate that federal supremacy applies only to the Constitution and laws made by virtue of Congress' enumerated powers. Those laws enacted by the States under their sole 10th Amendment powers, or natural rights reserved to the people by the 9th Amendment [36], lie beyond the reach of federal law so long as State laws honor other constitutional rights of the people.

Resolutions of Constitutional Justification should accompany the passage of any significant legislation as a clear indication to the Courts of congressional intent relative to that legislation. The Executive and Judicial branches of the federal government should be made to realize that ignoring such statements of intent raises the real peril of impeachment. The Congress also should make

it clear that it will not tolerate the use of extra-constitutional Court decisions based on non-U.S. legal systems or precedents.

**CLIMATE CHANGE AND ENERGY [10 and 29]:** The House “cap and trade” bill, H.R.2454, the misrepresented “American Clean Energy and Security Act of 2009”, will die as the 111th Congress comes to an end and good riddance. This Bill constituted an unconstitutional rejection of Congress’ Article I mandate to “provide for the common Defence and the general Welfare”. Such legislation to limit domestic energy production and to tax carbon emissions, if enacted into law, clearly would adversely affect the economy and thereby limit the Nation’s ability to counter potential adversaries or respond to direct attacks.

A House Climate Common Sense Resolution should be passed early in the 112th Congress, making it absolutely clear that Congress has no constitutional role in trying to affect climate change. This Resolution should recognize that the vast majority of recent climate change results from immense natural forces [30, 31, 32, 33, 34 and 37] we cannot control, rather than human use of fossil fuels. Senate Conservative Leadership should introduce a companion Resolution, forcing Democratic Senators to support this position or take a stand against national security, lower economic costs, and employment.

The President and Congress already have intentionally and aggressively weakened the nation’s economy and undermined the general welfare by focusing on deficit spending, a weak dollar, more heavy-handed regulations, future tax increases, and eventual inflation. A carbon emissions cap and tax on energy production and use further jeopardizes our ability to respond to security threats as well as inhibiting the private sec-

tor’s capacity to add new jobs. The focus of the Congress should be on producing more energy to maintain economic growth, to raise worldwide living standards and, where necessary, deal with the actual effects of natural climate change whether warming or cooling.

Americans will not forgive the loss of liberties in this unconstitutional power grab called “cap and trade”. Reducing energy costs by increased efficiency of conversion is one thing; but we should never limit growth in energy use and thus limit its associated improvements in human conditions and standards of living.

Congress should take direct and indirect actions to recognize that production and use of our own domestic oil, gas, coal, and nuclear resources buys us time to meet our international and economic energy challenges and, at the same time, preserve our liberty. Congress can constitutionally support sustained, long-term research and development [35] of energy alternatives, particularly those with clear and objective paths to commercialization, rather than continue tax dollar subsidies and loan guarantees for premature or flawed introduction of politically motivated concepts. We can provide truly competitive market, investment, and business environments that eventually will mature promising sources of future energy production as well as conservation.

The major areas the 112th Congress should address to provide an energy secure future are as follows:

**Tax Rates:** The House should lead in legislating a reduction in personal and business income tax rates in addition to the initial freezing of existing tax rates [38] established by the 2001 Economic Growth and Tax Relief Reconciliation Act.

**Regulations:** Congress should begin the elimination of regulations and regulatory authority not demonstrably related to defined constitutional powers and public safety. These steps should include the removal of regulatory bottlenecks on nuclear power plant and refinery construction and on exploration and production from beneath public land and offshore waters. House Committees should use subpoena power to require regulatory agency heads and appropriate White House officials to defend any regulation that restricts energy production or use in areas under United States jurisdiction.

**Subsidies:** Over the next four years, Congress should remove taxpayer subsidies and loan guarantees as related to all energy sources whether direct, through the tax code, or by other legislative or administrative mechanisms.

**Public Land and Offshore Access:** A major national security requirement for Congress is enactment of an accelerated program to encourage energy exploration and production from public lands or offshore waters where economically and technically feasible.

**IMMIGRATION [19, 21]:** The new Congress should make it immediately clear that it will reject any proposal to grant amnesty or an accelerated path to citizenship for illegal immigrants within the jurisdictions of the United States. Clause 4 in Article I, Section 8, of the Constitution makes amnesty of any specific group of non-citizens unconstitutional as it gives Congress only the power “To establish a *uniform* Rule of Naturalization.” The one-time amnesty for illegal immigrants in 1986 did not qualify as a “uniform Rule” nor would any other such move by the federal government. The 5th and 14th Amendments’ guarantee of equal protection of the law for all citizens also

would be violated if some immigrants must follow a different process to become citizens and not others, and if federal amnesty targets a specific group of non-citizens.

The requirements for national security, the often dysfunctional nature of government in Mexico, and the explosion of unfunded welfare liabilities make it necessary to take entirely new approaches to illegal immigration and the drug traffic embedded within it. Not surprisingly, the Constitution, directly or indirectly, includes everything necessary for Americans to address the realities of modern immigration.

**Seal the Border:** In providing for a Militia under Article I, Section 8, Clauses 15 and 16, the Constitution empowers both the Federal Government and the States, together or separately, to seal and enforce their international borders against illegal entry and one or the other, or both together, should do so. Also, Article I, Section 10, Clause 3 specifically gives the States the power “...to engage in War” when “actually invaded or in such imminent Danger as will not admit delay.” Clearly, Arizona and other Border States are being “invaded” by both non-citizens who would rob their taxpayers and criminals who would conduct illegal drug and terrorism-related activities within their jurisdictions. As recent near-border deaths and crimes show, delay in enforcement demonstrably constitutes “imminent danger” to all their citizens.

**Guest Workers:** Border-States should be encouraged individually to petition for the consent of Congress under Article I, Section 10, Clause 3, to contract with Mexico for temporary workers as required for unfilled jobs in labor intensive industries within their respective borders. These contracts should provide for vetting of workers relative to past criminal activity and outstanding war-

rants. Should the States not act, formalization of a national concept of “guest workers” appears to pass constitutional muster. This concept would be based on the systematic management of the national migrant worker supply so that supply matched the number and nature of available jobs not sought by American workers. As protection of the borders of the country constitutes a primary part of the federal responsibility for the “common Defence”, federal management of such a guest worker program would be constitutional. Clause 3 of Article I, Section 8, also may support a federal role overseeing those immigrants employed in interstate commerce.

**Current Law:** As part of taking control of illegal immigration, the Simpson-Mizzoli Act of 1986 should be repealed, immediately. Rather than a managed approach, that Act formalized the illegal status of migrants while in the United States and placed the onus of immigration law enforcement on employers.

**Entitlements:** The States and the Federal Government should respectively legislate to stop the provision of State and federal privileges and benefits to non-citizens. Nothing in the Constitution requires that they receive equal protection of American laws. We also should revisit and reverse past legislative and Federal Court determinations that rights and privileges under the Constitution apply to anyone illegally within the jurisdiction of the United States or born within that jurisdiction under false pretenses.

**Legal Residency:** Congress should provide an efficient and uniform method of gaining legal residency, particularly for needed high-skilled workers, and restrict the issuance of green cards to the immediate, nuclear family of a legal resident.

**Identification:** The current system of using State-issued driver’s licenses, or a comparable document for non-drivers, to identify American citizens should be continued. It is constitutional under the 10th Amendment, but the various States must accept the critical nature of this responsibility and issue identification only to citizens and legal residents. On the other hand, Congress should require that those States issuing driver’s licenses to illegal aliens cease this practice or, by 2012, federal agencies can no longer recognize that State’s licenses as valid identification. The driver’s license system’s resistance to counterfeiting should be improved through the application of federal technological research necessary to prevent and detect counterfeiting, applicable to Congress’ Article I, Section 8, Clause 6, power “To provide for the Punishment of Counterfeiting the Securities...of the United States.”

Further, Congress should formally reject attempts to impose national identification cards on all Americans, much less just on “workers.” this would look very much like the identification papers that came with Germany’s disastrous adoption of national socialism [16], adding to other trends in that direction now prevalent in the United States. Clearly, such cards, particularly if they contain personal information such as identifying DNA, runs afoul of the right to privacy guaranteed by the 9th Amendment [36].

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