

## Former US Senator Harrison Schmitt (R-NM) Declares that the Unconstitutional Actions by the President, and Congress, Stagnate the Economy

The provisions of the Constitution of the United States contain everything necessary to perpetuate liberty and provide economic prosperity in the American Republic. Again, the Founders got it right their politically myopic heirs in the 21st Century have not.

Unconstitutional interference in the mortgage market place brought the U.S. economy to its knees in 2008. The lack of basic financial education of our most financially vulnerable citizens exacerbated the effects of this political malfeasance. Nothing in Article I, Section 8 of the Constitution gives Congress the power to permit agencies of government to extort sub-prime lending by financial institutions. Nor does Congress have the constitutional power to create the Federal National Mortgage Association (Fannie Mae) and Federal Home Loan Mortgage Corporation (Freddie Mac) or to give them the means to assume obligations sub-prime lending. Congress does not even have the constitutional power to put the government anywhere close to housing markets.

Article 1, Section 8 of the Constitution specifies, that is, enumerates and limits the powers of the Congress. Even if the four corners of the Constitution as first ratified did not make clear this limitation on Congress, the Founders reiterated their intent in the 10th Amendment, stating, <sup>3</sup>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.<sup>2</sup> These facts deserve repeating, again and again.

The Constitution, therefore, contains no specified, enumerated powers to regulate financial institutions in the United States unless those institutions operate in interstate commerce (Article I, Section 2, Clause 3). Even in the case of institutions involved in interstate commerce, under the 5th and 14th Amendments, financial regulation must be such that it provides <sup>3</sup>equal protection of the laws<sup>2</sup> to all Americans and not give preferential financial terms to some and not others. Congress clearly has not provided equal protection to all in the case of the sub-prime lender extortion and subsidization. Sub-prime mortgages benefit only those who could not afford mortgages at market rates.

Were the Nation's private financial institutions blameless in the sub-prime meltdown? Definitely not. Those institutions should have stood up to government and shouted to the rooftops and in the courts that they would not be intimidated by Congress and its agent, Acorn, and that Fannie Mae and Freddie Mac interference in the markets and the Federal Reserve's abnormally low interest rates were economically unsound. The financial business sector abandoned market principles and joined the Government in a rush to the

economic disaster many predicted for most of the last decade.

With the collapse of this unconstitutional, sub-prime house of cards, Congress also has unconstitutionally provided the resources and authorization for the Executive to bailout failing financial institutions and other corporations while not providing equal protection to their competitors, customers, and shareholders. Bankruptcy law and procedures have been constitutionally provided under Article I, Section 8, Clause 4, and should have been allowed to work. The damage to the economy and to private institutions would have been much more contained and much less far-reaching than we have experienced.

Further, Congress has allowed the Executive to unconstitutionally assume the power to control the business decisions of major private corporations, to limit the salaries of their employees, and to generally exert authority on private enterprises outside the confirmed authority of the President's Cabinet. Contrary to Article II, Section 2, Clause 2, these powers have been vested by the President in appointees (<sup>3</sup>czars) who have not been presented to the Senate for its "Advice and Consent," that is, confirmation. Now, with last week's announcement that he will seek to selectively tax or apply a fee to large banks, we see the President's unconstitutional drive toward national socialism on naked display. No pretense remains of adhering to equal protection of the law.

The Founders created the Constitution to control government while, at the same time, providing for the benefits stated in its Preamble. They had no intention of unnecessarily enabling government, or the politicians and bureaucrats that populate it, to take over the responsibilities of the States and the people. Indeed, they adopted the first ten Amendments to further restrict the power of government. The Founders clearly understood that under an umbrella of liberty, and the free enterprise system liberty engenders, government cannot create wealth. They knew that, instead, government confiscates wealth and, in so doing, erodes liberty. Wealth the government takes from its citizens in the form of taxes and borrowing reduces the availability of wealth that can create new enterprise and employment.

What, then, could a new 2011 Congress do to fix the economic mess created by decades of political manipulation, excessive taxation and debt creation, and more recently by the imposition of national socialist edicts on free enterprise? Tax law, regulatory law, and the burdens of national socialism constitute the three most important arenas of constitutional encroachment to fix and fix quickly. Let's consider specifically, for the moment the general constitutional aspects of tax law, clearly the most important issue to consider at this point of Congressional and Presidential mismanagement of the economy.

Article I, Section 2, Clause 1, gives Congress the <sup>3</sup>Power To lay and collect Taxes, Duties, Imposts, and Excises<sup>2</sup> The 16th Amendment clarified this power by opening all incomes to taxation, <sup>3</sup>from whatever source derived.<sup>2</sup>

The requirement of Amendments 5 and 14 for <sup>3</sup>equal protection of the law<sup>2</sup> provides a critical limitation on what types of taxes can be levied. Even the 16th Amendment<sup>1</sup>'s clarification that all "incomes" could be taxed by Congress, cannot be construed to alter equal protection requirements.

Equal protection limits on Congress<sup>1</sup> power to tax mean that the only constitutional <sup>3</sup>income<sup>2</sup> tax would be a flat percentage levied on personal and business income. Logic and precedent define <sup>3</sup>income<sup>2</sup> as the difference between revenue or salary and the cost of obtaining that revenue or salary. Taken in their full constitutional context all taxes that violate equal protection by discrimination against individuals to benefit another individual or group are unconstitutional. Currently, such unconstitutional federal and state taxes include progressive income taxes, estate taxes, double taxation of dividends and foreign earnings, and capital gains taxes not indexed to inflation.

Additionally, Congress<sup>1</sup> power to tax does not mean it must apply a tax on all categories of income. Some income can be exempt from taxation so long as all earning Americans have the possibility of benefiting. In particular, the <sup>3</sup>common welfare<sup>2</sup> would be served by a robust economy if income saved or invested were exempt from taxation in order to increase capital available for business growth and employment. Some such savings and investments could be directed toward providing self-insured health care, retirement, and children<sup>1</sup>'s education during the long, multi-decade, but mandatory transition from government managed health, retirement, and educational loan systems, respectively.

Most tax deductions and tax rebates, if unavailable to all taxpayers, fall into the same unconstitutional barrel, as do discriminatory income taxes. Some deductions would be permitted in the exercise of specific powers granted to Congress in Article I, Section 8. Specifically, Congress can consider discriminatory tax deductions to (1) Promote the Progress of Science and the useful Arts [Clause 8], (2) Raise and support Armies [Clause 12], and (3) "Provide and maintain a Navy [Clause 13]. For example, deductions would be constitutional if they advance America's technological prowess or maintain the industrial base to support national security requirements.

Finally, Congress has the constitutional power to collect taxes by any means that satisfy equal protection of the law. The only clearly constitutional means for collection would appear to be that all earners pay their taxes on the same date certain each year. This brings into constitutional question Congress<sup>1</sup> requirement both for withholding taxes from wage earners and for requiring estimated tax payments from businesses and the self-employed. Certainly public policy and Congressional fiscal discipline would be served if everyone had to plan to pay their taxes once a year rather than having them taken by stealth or before the full benefit of wages and earnings can be realized.

Concerned Americans have their economic work cut out for them if they retake

control of the Congress through the elections of 2010. The task to recover lost economic liberty will be extraordinarily difficult, but not impossible. Then, what choice do liberty and America have but to <sup>3</sup>make it so<sup>2</sup>?

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