



## THE FOUNDATION

“The construction applied ... to those parts of the Constitution of the United States which delegate Congress a power ... ought not to be construed as themselves to give unlimited powers.” --Thomas Jefferson

## GOVERNMENT & POLITICS

### Repeal Is the Best Medicine

House Republicans' first goal for the 112th Congress is a vote on repeal of ObamaCare. Even if that passes the House, however, it faces almost sure defeat in the Senate. On top of that, we're pretty sure the occupant in the White House would veto a repeal of his signature accomplishment. None of that means House Republicans shouldn't proceed apace.

As we have said repeatedly from the start, ObamaCare is an unconstitutional federal power grab that will result in higher costs for worse care. Politically, the repeal effort sets up the 2012 campaign, but more important, if Republicans are to abide by their oaths, they must aim for repeal on principle, not just politics.

House Republicans may find allies in House Democrats who originally voted against ObamaCare. “I have not read the language yet, but I am inclined to support the repeal,” said Rep. Dan Boren (D-OK), who voted against it originally. Others have dug in. Former Speaker Nancy Pelosi (D-CA) warned, “[T]o say that we are going to repeal is ... to do very serious violence to the national debt and deficit.”

Sorry, we should've warned you to swallow your coffee before reading that howler. During her four years at the helm, the Pelosi-led Congress was responsible for adding \$5.3 trillion to the national debt -- \$4 trillion in just the last two years.

Pelosi and other ObamaCare apologists claim that ObamaCare itself will reduce the deficit and, therefore, repeal will do the opposite. They're using Congressional Budget Office numbers to back this up, but that, in and of itself, is deceiving. The CBO can score legislation only as Congress feeds it to them, not always as reality dictates. In this case, the CBO is offsetting a spending increase of \$400 billion, which is a sure thing, with cost savings that

aren't. What is worse, they are looking at 10 years of tax revenue versus six years of expenditures.

Regulations are another reason -- make that thousands of reasons -- to fight for repeal. For example, Section 1233 of a draft of ObamaCare mandated federal funding for end-of-life counseling. After critics said the section was bringing about “death panels,” however, the Senate ended up leaving it out of the final bill. Yet when Medicare released hundreds of new rules last month, funding for this counseling during annual wellness visits was quietly added. As Rep. Earl Blumenauer (D-OR), author of Section 1233, put it, “The longer this [regulation] goes unnoticed, the better our chances of keeping it.” Well, so much for that. Almost as soon as it became known, the administration reversed course.

Though the White House backtracked on this stealth regulation, there are surely more to come. On Jan. 1, several provisions of ObamaCare took effect, including restrictions on medical spending accounts and taxes on drug makers, so repeal efforts come not a moment too soon.

### Reading the Constitution? How Quaint.

Leftists screamed like demons splashed with holy water after congressional Republicans read aloud the Constitution to begin the 112th Congress this week. Such a reaction is understandable given that the document puts great limits on the government power leftists so cherish. Their mockery was open and widespread. The New York Times editorialized that it was “presumptuous and self-righteous” as well as a “ghastly waste of time.”

Elsewhere, MSNBC's Chris Hayes asked Slate.com senior editor and legal correspondent Dahlia Lithwick, “Is there an historical precedent for the Constitution fetish on the right?” Lithwick responded, “I think so. I think the way some people rub Buddha and they think the magic will come off, I think there's a long-standing tradition in this country. We're awfully religious about the Constitution. I think there is a sort of fetishization here that is of a piece with the sort of need for a religious document that's immutable and perfect in every way.”

Similarly, Washington Post blogger Ezra Klein derided the reading as “a gimmick.” Said Klein, “I mean, you

can say two things about it. One is that it has no binding power on anything. And two, the issue of the Constitution is not that people don't read the text and think they're following. The issue of the Constitution is that the text is confusing because it was written more than 100 years ago and what people believe it says differs from person to person and differs depending on what they want to get done." Hmm, "more than 100 years ago," Ezra?

Thomas Jefferson thought differently: "In questions of power, then, let no more be heard of confidence in man, but bind him down from mischief by the chains of the Constitution."

### **News From the Swamp: GOP Spending Plan**

House Republicans hit the ground running in their attempts to bring fiscal sanity to Washington as promised in the 2010 midterms. However, it took many years and both political parties to bring us to the brink of fiscal disaster, so it's natural to be skeptical that Republicans can truly make a change. First up is the national debt, which passed the \$14 trillion mark this New Year's Eve. The debt ceiling of \$14.2 trillion will be reached soon.

Republicans have vowed to vote against raising the debt ceiling unless there is a concrete plan in place to reduce federal spending. If the debt ceiling is not raised, the government "shuts down" and will default on a number of loans. Obama economic adviser Austan Goolsbee called the idea of not raising the ceiling "insanity." What's really insane, though, is automatically raising the debt limit every time it's reached without working to reduce that debt. When Obama was a senator, he didn't think it insane to vote against raising the debt ceiling in 2006. (In 2007 and 2008, he simply didn't vote.) Then again, Obama is much happier when we do what he says, not what he does.

As for spending cuts, the new GOP proposals and rules will surely lead to a showdown with spendthrift Democrats. The GOP goal is to remove 21 percent of the \$477 billion that has been approved for domestic discretionary spending this year. Republicans also want to take back \$12 billion from the president's \$814 billion stimulus package that has yet to be allocated. The House leadership is also developing a new set of rules that may hold spending in check.

For starters, the so-called "pay as you go" rule is history. Democrats under Nancy Pelosi lauded paygo as their plan to keep spending under control. In theory, any spending increase had to be offset by a tax increase or a spending cut elsewhere in the budget. In practice, Democrats exempted any spending increases on entitlements, which

is where the biggest spending abuses exist. Besides, Democrats never actually wanted to cut *anything*, so they exempted everything else as "emergency" spending. Republicans have introduced a new plan where even increases in mandatory spending will require equal spending cuts elsewhere in the budget.

Republicans will also require budget projections to be reported out further than the traditional 10-year window, which will make it harder to hide deficit spending. Spending reduction accounts will also be established to hold money slashed from spending bills to reduce total amounts appropriated. In the past, money cut from an earmark or a program was merely added elsewhere in the budget, resulting in no real cost savings.

As a countermeasure, the White House is calling for true cuts to its least favorite institution -- the Pentagon. The Armed Forces will absorb a \$78 billion cut over five years, including a reduction of nearly 50,000 active duty soldiers and Marines over that time. These will be the largest cuts since before 9/11.

### **The BIG Lie**

"Deficit reduction has been a high priority for us. It is our mantra, pay-as-you-go." --Nancy Pelosi

### **New & Notable Legislation**

Before leaving town for Christmas, the Senate voted 71-26 to ratify New START, the nuclear arms reduction treaty Barack Obama secured with Russia last year. Thirteen Senate Republicans caved to join every Democrat in what will be a damaging blow to our national security in the coming years. The treaty will go into effect after the Russian Duma ratifies it, which is expected to happen later this year.

Under the pact, the U.S. must reduce its ICBM fleet and its nuclear bombers. Both sides must cap their strategic warhead stockpile, but curbs on American missile defense and research for a next generation of warheads will lead to a severe disadvantage. Some wavering Republicans were won over after pledges were made to modernize the nuclear stockpile and continue exploring missile defense options. Unfortunately, it's uncertain if Obama will follow through.

### **Income Redistribution: IRS Advises Early Filers to Wait**

Early income tax filers will have to hold filing their returns this year because the IRS is not prepared to receive them. The bill for tax code changes wasn't signed into law

until Dec. 17, leaving the IRS with little time to reprogram its processing systems to reflect the changes. Some 9 million taxpayers who itemize their deductions and file early will have to hold off for an undetermined amount of time before filing their returns. Of course, this all means that in these difficult economic times, the government keeps your money interest-free all that much longer.

### **New White House Chief of Staff**

Barack Obama has chosen another Chicago crony as his next chief of staff. William Daley, brother of outgoing Chicago mayor Richard Daley, will replace the old Chicago crony, Rahm Emanuel, who is running to replace Richard as mayor. Call it the “Chicago Two-Step.”

Two things stand out about Daley. First, he opposed ObamaCare and the extreme leftward tack of the administration, and, second, he was a senior-level banker at JP Morgan Chase. So Obama can appear to head for the center as well as reassure the banking industry that he’s friendly. A two-step in more than one way.

### **From the Left:**

#### **National Leader’s Christmas Vacation**

Some things truly can’t be parody because the joke’s on us. As many along the East Coast were drilled by an unexpectedly heavy Christmas weekend snowstorm, Barack Obama, his family and assorted staff enjoyed a balmy Hawaiian beachfront holiday. We’ll grant that Hawaii is at least somewhat home to the president as he spent a significant amount of his youth there, but it’s the exorbitant cost that drew our attention.

Instead of paying \$3,500 daily rent for three beachfront homes for the Obamas and over \$130,000 for a local hotel for his staff, the First Family could have instead bedded at an equally suitable venue in the Kaneohe Marine Corps Air Station just minutes away -- a place where he works out while in Hawaii. Another waterfront alternative would have been Bellows Air Force Base where Bill Clinton stayed. All told, the vacation cost more than \$1.5 million.

## **NATIONAL SECURITY**

### **Don’t Touch Our Government Screeners, Union Says**

The scanners are still in place and perhaps your junk may still be touched, but a growing number of airports are moving toward replacing government employees with personnel from private companies. Airports that already use privately owned and non-union security firms, including those in hub cities like Kansas City and San Francisco, point to improved customer satisfaction and a better

bottom line as reasons to use a private contractor.

On the other hand, service is much less of a concern for the TSA, whose union complains that private screening companies are a “patchwork quilt” of security and are ineffective. These apologists also believe that the union screeners’ expertise and training are “unparalleled.”

Fortunately, privatization has an ally in Congress. Recently, Rep. John Mica (R-FL) wrote to 200 airports, urging them to consider changing over to a private screening service. His reasoning is simple: It would allow the TSA to focus on security while leaving the service to more customer-friendly employees. The TSA “should focus on its mission,” said Mica, “setting up the protocol, adapting to the changing threats and gathering intelligence.” He added that Americans are “very lucky” a terrorist plot hadn’t succeeded under the current system.

### **Warfront With Jihadistan: Securing the Other Border**

The New Year is bringing good news and bad news from the Department of Homeland Security. The good news is that DHS is beefing up security by sending agents to secure the border. The bad news is that the border in question is the one between Afghanistan and Pakistan. During a Jan. 1 news conference in Afghanistan, Secretary of (Afghan?) Homeland Security Janet Napolitano confirmed there were 25 Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CPB) agents in Afghanistan, and that number could increase to 65 or more by the end of this year.

Napolitano also outlined the “critical” work that these U.S. agents are performing, such as: “How do you arrange in-bound versus out-bound lanes? How do you make sure that you can check trucks? How do you employ the right kind of equipment in the right way?” One might think that *homeland* security agents would be better off performing these functions in America, but what do we know?

In addition to the obvious question regarding why homeland border agents are being used to secure a foreign border, this head-scratching situation brings up a number of other questions, such as: Have ICE and CBP personnel been deployed to help secure other foreign borders? When asked this question, a DHS spokesperson said that they had been, but conveniently, “security” prohibited providing details. Apparently, that security doesn’t apply to Afghanistan, where U.S. troops are fighting in a war. What U.S. border stations have had their capabilities diminished

by pulling these agents and sending them overseas? And what capabilities can DHS agents supply that U.S. and NATO military forces cannot? We doubt this clueless administration can answer those questions.

### **Iran Offers Nuclear Tour, But Not to U.S.**

In the eight years since Iran's nuclear program first came to light, Tehran has used numerous tactics to delay, obscure, deny and generally avoid cooperating with the International Atomic Energy Agency and the UN Security Council, while also evading tough sanctions or a U.S. or Israeli air strike. Iran's most common practice has been to talk -- endlessly -- with a rotating cast of antagonists, without ever agreeing on anything except the need to hold more talks. A recent media headline following the December 2010 meeting in Geneva captures it perfectly: "Two Days of Talks Between Iran and World Powers Ended in Agreement to Meet Again."

Iran's latest ploy is an invitation to various governments to travel to Iran and tour two nuclear facilities prior to the aforementioned "Agreement to Meet Again," which will take place with the P5+1 (U.S., Britain, France, China, Russia + Germany) in late January in Istanbul. This latest ruse is intended to give Iran the veneer of international approval for the "peaceful" intent of its nuclear program, while doing nothing to satisfy IAEA concerns about Iran's real intent.

Predictably, several nations have apparently agreed to travel to Iran for this sham tour, including UN Security Council non-permanent member Brazil and permanent members Russia and China -- Iran's two most reliable patrons and protectors over the last eight years. Cuba, Egypt and Turkey will also join the fun. Look for public statements in the coming days from these nations' foreign ministers that they saw nothing amiss -- and look for Iran to go right on playing the UN like a dutar in 2011.

## **BUSINESS & ECONOMY**

### **EPA Oversteps (Again), Comes Under Fire (Finally)**

"Rule by regulation" has become an apt motto for the current administration. Last month, the Environmental Protection Agency (EPA) announced that it was setting new greenhouse gas emission standards for fossil fuel power plants and oil refineries. Readers will recall that cap-n-tax legislation failed in Congress last year, but apparently this president views Congress as only a minor obstacle when it doesn't go along with his agenda. "Cap-and-trade was just one way of skinning the cat; It was not the only way," Obama said. The Wall Street Journal reports, "Since De-

cember 2009, the EPA has issued four major greenhouse gas rule-makings."

Not everyone is taking this regulatory rampage lying down, but after Texas dared to become the lone state to persevere in challenging the government's tactics, the EPA seized the Lone Star State's authority to issue air permits for power and industrial projects, claiming the agency had "no choice" but to do so. Thankfully, the DC circuit court of appeals smelled a rat and suspended the EPA's rules pending judicial review.

Meanwhile, the EPA has been hit with a lawsuit by auto industry trade groups protesting the agency's determination to allow the sale of gasoline with 15 percent ethanol for use in vehicles built since 2007. These trade groups are (justifiably) concerned that higher blends, if mistakenly used by consumers, may damage older vehicles, and they argue that the EPA doesn't have the legal authority for its move. The EPA argues that the higher blends are needed to meet congressional requirements that 36 billion gallons of biofuels be blended with gasoline by 2022. Obviously, having lost its to-heck-with-Rule-of-Law majority in the House of Representatives, the Obama administration intends to circumvent the legislative process altogether and implement its environmental agenda via regulatory fiat.

### **Regulatory Commissars: FCC Moves Ahead With Net 'Neutrality'**

Unable to destroy the Internet's spread of conservative thought and information through the worst Congress in history, FCC regulators for the Obama administration have ignored the will of the people and the new Congress by arbitrarily imposing vague net neutrality regulations. The FCC, which used the corrupt methods from the passage of ObamaCare as its model, deliberately kept the proposed regulations away from the prying eyes of the public while also violating a court order halting its previous attempt to regulate the Internet.

Despite its lack of authority to do so, the FCC has been trying to impose its so-called "net neutrality" regulations to restrict the ability of Internet Service Providers (ISPs) to manage network transmission. Even more overtly in its raw overreach for power, the FCC's own website was taken down for "maintenance" during the four days prior to imposing the regulations, preventing public access to the more than 1,900 pages of comments it had already received. Only in Obama's world does government refusal to provide public access to the government, willful

disregard of the judicial system, and hiding behind make-believe system maintenance qualify as fairness, openness and transparency. The practical effect merely tells the country that leftists so fear allowing citizen participation in government that they do everything they can to keep citizens out.

### **Village Academic Curriculum: Why Didn't We Think of That?**

Here's something you thought you'd never see: a group of Ivy League academics staging a tax revolt. Only instead of outrage over paying too *much* in taxes, these elites are in a tizzy about paying too *little*. Responding to the extension of the Bush tax cuts, three professors from Yale and Cornell are encouraging their wealthy colleagues to donate their tax breaks to charity because those "massive" tax cuts "disproportionately benefited the wealthiest Americans." Uh, that's because they're the ones that pay a disproportionate share. The solution, according to the profs, is for these Americans to "give what they can afford -- in large amounts or small -- back to the public, by supporting organizations that promote fairness and economic growth."

To minimize their hypocrisy, they should just give the money to the government, but, oddly enough, the site notes that donations are *tax deductible* and that those who join the effort "will begin to replicate good government policy, outside the government and free from the grip of obstructionists within it." How ironic. As The Wall Street Journal's James Taranto notes, "[I]f you follow the professors' method of protesting your low tax bill, you will lower your tax bill even further. Talk about a win-win!" That's not all. Taranto adds that these Ivy Leaguers have "made a profound discovery: Private, voluntary charity is far more effective than coercive federal bureaucracies at helping people in need. To be sure, this is common sense. But you don't get tenure at Yale or Cornell by being common." Or by having sense.

## **CULTURE & POLICY**

### **Second Amendment:**

#### **Guns, Gangs, Guts and the Greater Good**

In December we teed up an intro to what we anticipated would be the Left's warning shot toward greater government intervention into the constitutional right to keep and bear arms. True to form, the Bureau of Alcohol, Tobacco, Firearms and Explosives (BATFE) did not disappoint in punctuating that intro with its own exclamation points.

Those familiar with the "assault weapon" paint bucket with which the Left attempts to color all semi-automatic

weapons will at once recognize the obvious overstretch in this latest ploy. Asking the White House for what it terms "emergency" authority to track semi-automatic rifles and multiple purchases of high-powered rifles, the BATFE claims the measure is needed to counter violent Mexican drug cartel border crime.

Never mind that these multi-billion-dollar cartels are armed to the teeth with high-caliber military rifles, machine guns, rocket launchers, grenades and a host of other weapons that cannot be purchased in the U.S. Or that these weapons reside beyond U.S. borders. Also never mind that U.S. borders leak like a sieve because Team Maybe-We-Can't-After-All lacks the will to secure and protect them. No, apparently the politically correct solution for drug-related gun violence in Mexico is to -- wait for it -- blame America! Who would have guessed?

Notwithstanding its ostensible goal, however, the proposal has much broader, less sanguine implications for law-abiding American gun owners. For instance, BATFE defines the term "multiple" as any purchase beyond one rifle. Likewise, "high-power" means anything larger than .22-caliber. Such a widely cast net will hurt American freedoms much more than help any efforts against Mexican drug gangs, as countless guns unrelated to borderland drug gang violence also satisfy these definitions and would have to be (further) regulated by the feds.

Although BATFE claims its proposed regulation would apply only to gun dealers near the Mexican border -- roughly 8,500 dealers -- the size and scope of the plan has the unmistakable smell of "progressives" and governmental overreach. Many who defend this regulatory Hail Mary take the position that U.S. citizens shouldn't care whether Big Brother knows what they're doing as long as they're "doing the right thing," and that such a minor encumbrance on certain freedoms is simply the price of making us all safe. But they miss the point: As the Founders knew, for true Americans the "greater good" is never a sufficient reason to trample constitutionally guaranteed individual rights.

### **Judicial Benchmarks:**

#### **Cell Phones Can Be Searched at Arrest**

On Monday the Supreme Court of California whittled away some of the Fourth Amendment when they ruled that the police may search an arrestee's cell phone without a warrant. The 5-2 majority, led by Justice Ming Chin, claimed that under precedent set by the U.S. Supreme Court in the 1970s, defendants lose their right to privacy regarding objects in their possession at the time of ar-

rest. Chin cited cases that, among other things, allowed law enforcement to seize and search a pack of cigarettes. But there's a far cry between a pack of smokes (which could conceivably contain drugs or a razor blade) and a cell phone that, first, is clearly not a weapon, and second, contains a massive quantity of personal information.

The legal system has not yet caught up to our ever-changing technology, and there are some judges who are using the opportunity to erode our personal freedom. This is not the first time the issue has come up, either. In 2007 and 2009, courts in California and Ohio respectively found that the defendants' rights were violated, leading experts to believe that the Supreme Court will eventually weigh in on warrantless cell phone searches.

### **From the Left Judiciary: Ninth Circuit Rules on San Diego Cross**

"A federal appeals court ruled on Tuesday that a San Diego war memorial marked by a four-story-tall Christian cross on public land violates the U.S. constitutional ban on government endorsement of religion," Reuters reports. We have reported previously on the two-decades-old legal dispute over the Mount Soledad Veterans Memorial, and in this chapter a panel of the Ninth Circuit Court of Appeals ruled 3-0 that the U.S. "district court erred in declaring the memorial to be primarily nonsectarian and granting summary judgment in favor of the government and the memorial's supporters," who want to keep the cross. This is a clear miscarriage of justice by the advocates of the oft-misused "Wall of Separation," but it's unclear whether the case will reach the U.S. Supreme Court.

### **Faith and Family: Christian iPhone App Removed**

Apple recently rejected an iPhone/iPad app that contained the text of the Manhattan Declaration, which the Baptist Press describes as "a 4,700-word document that includes basic Christian teachings and Bible verses on marriage, life, and religious liberty. Key leaders such as Charles Colson, James Dobson, Richard Land, R. Albert Mohler Jr. and Timothy Dolan signed the document in 2009, and more than 480,000 people subsequently signed it online." The document opposes same-sex marriage, abortion and embryonic stem cell research. Apple initially approved the app and gave it a 4+ rating, meaning it contained "no objectionable material."

After 8,000 homosexual activists submitted a petition requesting the app's removal, however, Apple reversed course and rejected it, claiming that "it violates our developer guidelines by being offensive to large groups of people" and its content is "likely to expose a group to

harm." Manhattan Declaration is now running a petition for reinstatement.

### **Climate Change This Week: Warming Caused Blizzard**

Is there any phenomenon, meteorological or otherwise, that can't be explained by global warming? Case in point, the recent blizzard and below-normal temperatures in the Northeast. According to Time Magazine, both are due to global warming.

Time reports a variety of theories, one being that a warmer Arctic may actually lead to colder and snowier winters in the northern mid-latitudes. The theory seems counterintuitive, but to Jeff Masters, a meteorologist blogger, it makes sense: "This pattern is kind of like leaving the refrigerator door ajar -- the refrigerator warms up, but all the cold air spills out into the house." Thus, the planet overall is still warming but the cold air from the far north can result in biting winter weather and major storms.

The news mag accepts global warming as a given, forgetting that many of the models and data were proven to be rigged by the Climategate scandal. Time explains away these flaws, saying, "Just because climate models predict that the planet will continue to heat up in the future as we continue to pour greenhouse-gas emissions into the atmosphere doesn't mean that warming will be a steady, even process. ... Unfortunately, that unpredictability is going to make adapting to a warmer world even tougher. As climate change appears to trigger harsher winter events in parts of the world, that's not an effect that will last forever." Under this view of the climate, when Irving Berlin wrote "I'm dreaming of a White Christmas," he was really warning about global warming.

### **And Last...**

On Dec. 23, Sen. Robert Menendez (D-NJ) wrote a letter to Santa Claus expressing concern for his welfare because of the damage man-made global warming is doing to the ice caps on the North Pole. Apparently, Santa is receiving email via Huffington Post these days, for that's where the letter was posted. Of course, the letter is full of self-congratulatory references about how hard Menendez has worked to combat the climate change that will rob Santa of his job. He must have been hoping to get on Santa's "nice" list.

Three days after Menendez posted his letter, the Northeast, including his home state of New Jersey, was hit by the aforementioned blizzard. Perhaps Santa should relocate to Newark.