

## Policy Changes for the New Congress

AMERICAN ENTERPRISE INSTITUTE CONFERENCE

**This year's elections may have produced the most conservative House of Representatives in modern American history. The new Congress takes office facing daunting challenges, including high unemployment, stagnant wages, rising debt levels, and a public divided over the sweeping new health care law and the proper limits of government. The new 112th Congress will be sworn on January 3rd, and many questions surround their proposed agenda. The American Enterprise Institute (AEI) hosted a three panel discussion on the political intentions of both parties with legal scholars and health policy analysts.**

Panelists reviewed policy options for the new Congress to promote smaller government and reduce spending Monday at an American Enterprise Institute event cosponsored with the National Review Institute. In any policy area, both economic and constitutional factors must be considered. First, James Capretta, Scott Gottlieb, M.D., and Ramesh Ponnuru discussed how implementing market-based reforms now at the state level could mitigate the negative effects of ObamaCare, on both the economy and health care quality, when it goes into full effect in 2014. Next, economic analysts Kevin A. Hassett, Andrew G. Biggs, and Robert Stein commented on the necessity and difficulty of achieving fiscal consolidation, focusing primarily on the need to rein in entitlement spending and government-labor costs. Finally, scholars Michael S. Greve, David McIntosh, and Matthew Spalding discussed how the election has created an opportunity to educate a new class of

legislators about their role in defending the enumerated powers and maintaining the constitutional limits of the federal government. The first panel discussed efforts to repeal the health care law by next Congress. Panelists included former White House Budget officials in the Bush Administration as well as from the Centers for Medicare and Medicaid.

### Healthcare

The panel discussed the possibility of repealing the Obama healthcare bill, or at the very least, changing it fundamentally. The current healthcare bill is in need of repeal because it will have a devastating impact on the American economy, on fiscal policy, on the quality of American healthcare and on healthy political discourse in the United States. The majority of the current healthcare bill is viewed as one big tax-and-spend bill. Over the next decade, according to CBO, taxes will be raised by \$700 billion with the effects being slower growth, lower employment and higher health costs. Employers will have a strong incentive to avoid hiring a low wage worker, because if the employer ends up in the new subsidized system of insurance, the employer will pay a fine higher. While hiring a higher wage worker avoids the paying of health insurance fines, creating huge disincentives to hiring people most need of work. Another problem with the healthcare bill is the expansion of Medicaid by 16 million people. Currently, Medicaid is stretched to the limit and will not be able to handle the additional influx of people, adding 1\$ trillion to the

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cost of the bill. The bill also has a huge impact on the nature of political discourse. The purpose of the bill is to have the middle class fully dependent on the government for their healthcare. More people will rely on the government for the financing and delivery of their health services. This will change the balance of power between the government and its citizenry, with people feeling very dependent on the government's power on delivering healthcare for them, damaging in the long run the healthy function of U.S. democracy.

A straight repeal vote should take place. Short of full repeal, efforts should focus on stalling certain regulations by withholding funding. Also, states can play a big role by putting in certain structures, rules and frameworks that may not be compliant with the healthcare regulations but nonetheless provide consumers a more attractive alternative, setting the path for 2012 for a new president and full repeal. Also, states can create market-based exchanges, rather than relying on government appointed boards that dictate what plans can be offered in insurance exchanges in the healthcare bill.

Constitutional limited government, free market principles, or a reliance on individual responsibility should be the focus if the current healthcare bill becomes an accepted part of the public policy landscape. It is implausible for people to look towards DC for the maintenance of their healthcare, yet retain the sort of jealous regard for individual liberty that the constitution envisions.

#### **The Economy and Spending**

Panel two tackled the state of the U.S. economy and what steps the next Congress should take on reducing spending. A recent report by the President's deficit reduction commission on reducing costs was also discussed.

Currently there are two debates: what the tax levels will be next year and the question of appropriations for the next year. Will Democrats pass an omnibus, locking in very high funding levels for the next year, will

they pass a continuing resolution that funds the government at current levels until next year, or will they pass a short-term continuing resolution that would punt the budget to the Republicans early next year?

There will be a need for deficit reduction plans that take a look at the long term unsustainability of entitlement programs and the current spending trajectories. Fiscal consolidation is necessary as an effort to reduce the percentage of debt to GDP. There are two ways of enacting fiscal consolidation, either by relying on increased tax revenue or reducing expenditures. According to the panel, no successful fiscal consolidation has occurred when using more than 50 percent of tax revenue, and only plans that use the reduction of expenditures will actually be successful in reducing debt. A modest success would be a reduction of 2 percent and a great success would be a reduction of debt to GDP at 6 percent. Current debt to GDP will be at 87 percent at the end of the year, higher than most Latin American countries that defaulted on their debts.

Two major forces are now pitted against each other regarding efforts to reduce debt. The Bipartisan Policy Center plan for debt reductions is one option for fiscal consolidation, and the other is the Bowl-Simpson budget reduction plan. The Bipartisan Policy Centers plan intends to reduce and stabilize the debt at 60 percent of the economy, plans to reform personal and corporate taxes to make America more competitive, ensures that Social Security can pay benefits to future generations, and controls health care costs. AEI's Director of Economic Policies Studies Dennis Hassett displayed an economic model that graphed the failure of the Bipartisan Policy Centers plan due to its reliance on tax revenues. The Bowl-Simpson budget reduction plan, on the other hand, was graphed as a success, based on Mr. Hassett's model, due to its reliance on reducing expenditures like cutting Social Security, Medicare, and Defense and discretionary spending while increasing taxes. The most recent midterm election seemed to display the need for smaller government, and the political wave seems to forecast that the Bowls-Simpson plan would

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be the way to go, as it seeks to reduce the overall size of government. However, the Bows-Simpson plan is not the cure all remedy but part of a regiment that needs to be taken collectively if the economy is to recover. Additional findings show that successful debt reduction plans focused on social transfers (welfare and entitlement spending) and the government wage bill (number of government workers and wages paid).

OECD stated that emphasis on cutting current expenditures has been associated with overall larger fiscal consolidations and a large weight on social spending cuts increased the chances of stabilizing the debt to GDP ratio. The IMF stated that fiscal consolidation that focus on the expenditure side and especially on transfer of government wages are more likely to reduce public debt to GDP ratio than tax based consolidation. Lower government transfers encourage people to work more and save more, stimulating the economy. Signaling effect also has a purpose. Governments that take on third-rail issues like welfare signal to their citizenry that they are committed to fiscal responsibility. Individuals become more confident in their government and the economy and may start investing more, likewise with the business community.

Social Security should be refocused on providing insurance against poverty for the disabled and for the old. Today, Social Security is collected by the middle aged and the middle class, so a typical person spends 1/3 of their life on Social Security. Public sector pay also must be reformed. Latest report states that federal workers are paid 10- 20 percent higher than otherwise similar sector employees, so reducing federal pay would not only save \$40 billion but it would also show commitment to the public that the Government was committed to the reduction of debt to GDP, and that the citizenry was not the only body taking a financial hit.

One columnist mentioned that federal workers should be underpaid because they are not terminable by will.

## The Constitution

Lastly, the third panel held an in depth discussion on how the 112th Congress should set constitutional limits on the federal government's size and authority. Panelists included Federalist Society Vice Chairman and former Congressman David McIntosh (RIN) along with legal scholars from the Heritage Foundation and AEI. There is a resort to basic constitutionalism, and the prime example used was Nancy Pelosi's response to the question of whether the healthcare law is constitutional: "Are you serious?" The new congress should not rely on the Supreme Court either with regards to the constitutionality of the healthcare law, because the judge's reliabilities are in question. Additionally, the constitution is not the judges, subject to the definition of a five member majority, but it belongs to the people, subject to their will. The size, cost and intrusiveness on freedom of the current government is freighting. Every branch has exceeded its proper boundaries under the constitution. Congress itself, by acts of legislation, that cannot find basis in the constitution for the healthcare law, executive branch agencies that rest vast powers on slender reads of statutory legislation (think of the E.P.A.) and the judiciary branch, which claims a supremacy over constitutional questions that was never intended by the founding fathers. The current electoral sentiments should be transferred to a constitutional moment. Congress needs to get control of the legislative function. Congress needs to learn how to write bills again, make them transparent and in plain English. Constitutional authority should also be strictly enforced, especially in healthcare. Legislation should be passed that repeals the healthcare mandate on constitutional grounds. Executive Orders should also be looked at, regarding their constitutionality, as well as instituting aggressive oversight. Congress should use oversight on the fourth branch of the government, known as the administrative state. Congress should challenge regulations, their constitutionality, and new regulations should have a sunset.

The administrative state is also something that needs to be looked at. The czars and

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heads of agencies that are neither executive nor legislative should be under the review of Congress. Legislatively, Congress should consider the legislative veto.

Additionally, a Constitutional amendment should be introduced that would require all states to abide by a bankruptcy code, as several states are near bankruptcy, including Illinois and California. Another topic discussed is federalism and that conservatives should be weary when they call for decentralization because that does not always mean deregulation. For example, the Frank-Dodd financial regulatory bill liberates state regulators to go after financial institutions that, since 1864, have been immune from state interference. This means more state power and authority, but may not be the perfect federalist model that conservatives should follow. When it comes to federalism, the panelist stated that the government should listen to the states and do the exact opposite. If states demand more regulatory authority, demand more subsidies, new bonds, more flexibility, just say no. Think not what Utah would do with such flexibility, but think of what California would do with such flexibility (again, think of the E.P.A.). The current model should be a rejection of the president's broad agenda and a focus on transferring political moments into constitutional strategy. Congressman McIntosh stated that constitutional prerogatives and limits on executive action should be a focus. Currently, Congress only has a vague notion of what is constitutional, with very little thought given to what powers were enumerated to the legislative branch. To Congressman McIntosh, it was not surprising that Nancy Pelosi came back with the "are you serious" response. Like her, most members have not been challenged on the constitutionality of the legislation they introduce and support. The momentum from the Tea Party movement has inspired many in congress to start challenging legislation purely on constitutional grounds. Regardless of the effect on the legislation, the lasting impact of enshrining constitutionalism into the legislative process to ensure that the laws are deemed legal under the constitution would be beneficial to all parties. There are ways that the legislative branch can re-

assert greater attention to the constitution. One, support direct challenges in the judiciary to unconstitutional legislation (example is the healthcare bill). The congress should pass a resolution stating that it agrees with the premise of such challenges that an individual mandate is not in the Commerce Clause or any other section of the constitution.

Additionally, oversight hearings should be held on what exactly are the enumerated powers of States, what is the commerce clause, etc. This should be done not only for the public but also to educate the lawmakers as to what their legislation can encompass, and what it cannot. Finally, Congress is not being specific enough in its delegation of authority. Before an agency is created, power is transferred and heads are appointed to positions that have huge impacts on the economic interest of the country that position and the relative agency should be subject to Congressional authority. For instance, should the healthcare bill or the E.P.A. have the power to fundamentally impact the economy without a say from the people or approval from the Congress?