

The Battle: Who Decides in Health Care?

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In March 2009, at a White House Summit to kick off his health care reform initiative, President Obama declared, “We’re at the Thelma and Louise moment. We’re in the car heading for the cliff.” To much laughter he added, “Now I just want to be clear if you actually saw the movie, they did drive over the cliff. So, just want to be clear, that’s not our intention.”

Although many deadlines were missed along the way, by the end of 2009 both the House and Senate had passed versions of health care reform, setting up the prospect of reconciliation and the bill’s almost-certain passage. But in late January 2010, in what NPR characterized as a “staggering blow” to the president, Republican Scott Brown —running on an explicit platform of being the 41st Republican vote against “Obamacare” —achieved a stunning come-from-behind victory to fill the Massachusetts Senate seat left behind when Democratic Senator Ted Kennedy died the previous August. It suddenly looked as if health care reform might die.

Less than a week later, the president and Democrat leaders in Congress opted to go “all in” to try and circumvent the unexpected obstacle posed by Brown’s election. They did not want to repeat the defeat of health care reform, as in 1994. Ultimately, the winning argument was that the failure to achieve health care reform could fatally cripple Obama’s presidency and hurt his broad agenda of other domestic policy initiatives. White House political advisors and the leadership in Congress were confident that a majority of voters would grow to like the plan once it was enacted, and after the president educated the public about its implications.

No one anticipated a steady decline in President Obama’s popularity after the final passage of the health reform plan by the House on March 22, 2010. In some regards, these events are strongly related. While the new health care law cannot be entirely blamed for the steady decline in the president’s popularity five months after the bill was signed, it clearly fed a larger narrative that had begun to build about the growing disconnect between the direction of the Obama administration and the aspirations of the public majority.

This will cause inevitable erosion in the size of the majorities of Democrats in the House and Senate. What is not certain is whether this will be a “wave” election—in other words, a tide sweeping Republicans into state and national offices across the country.

Public Attitudes Toward Health Care Reform

In general, midterm elections usually shape up as a referendum on the president’s performance (as opposed to the tendency of voters to “vote their pocketbooks” in presidential elections). There is little question that President Obama’s approval ratings have been affected in part by his handling of health care reform—a phenomenon that was seen as early as May 2009. Recall that the health reform initiative was launched in early March. Between April and June, the president’s approval among Independents dropped by 15 percentage points, while the percentage of Independents who regarded him as liberal or very liberal rose by 18. This can almost certainly be attributed to the president’s handling of health care, as approval of his performance on this issue declined from 57 percent to 49 percent.

In subsequent months, the president experienced a steady decline in approval ratings. On March 18, 2010, just days before final House passage of the health plan, his disapproval rating finally exceeded his approval rating. The latest RealClearPolitics (RCP) Average as of mid-August shows the disapproval gap at 4.4 percent. Recent polls by the *Wall Street Journal*/NBC News and Gallup both show that on a dozen leading issues, more respondents said the president has fallen short than has met expectations. In health care, this expectations gap was 16 percent (55 percent vs. 39 percent), a difference exceeded in size for seven other issues ranging from the economy (37 percent gap) to standing up to big business and special interests (17 percent gap). Thus, health care is one of many factors that have contributed to the president’s growing disapproval rating.

In the week prior to final House passage of the health bill, seven different national polls registered opposition by the public by a spread that ranged from 11 to 20 percent. The most recent RCP Average for the month ending August 9 showed opponents of the health care law outnumbered proponents by 11 percentage points. Even though the bill included \$250 rebates to seniors with high out-of-pocket medications costs, one poll two months after the law’s enactment found that elderly opposition to the new law was 14 percentage points higher than among the general public.

Perhaps a better measure of the depth of opposition to the new law is reflected in public opinion about whether it should be repealed. Rasmussen polls (which sample only likely voters) have reflected strong and consistent support for repeal. In nearly five months after the House vote, support for repeal has ranged from 52 to 60 percent, while opposition to repeal has ranged from 32 to 42 percent. In the most recent such poll, the gap between opponents and supporters of repeal was 17 percent. But this masks a sharp partisan divide, with 75 percent of Republicans and a plurality (42 percent) of Independent voters who Strongly Favor repeal of the bill, while 50 percent of Democrats are Strongly Opposed. Overall, Independents support repeal by a full 50 percentage points (72 to 22 percent), a yawning gap among those most likely to determine electoral outcomes in the most hotly contested races. Except for those making less than \$20,000 a year (who oppose repeal by eight points) every income group supports repeal by a margin of at least 15 percentage points.

What's the Beef?

In light of the widespread support of Medicare among the elderly, what can explain the antipathy of voters towards a new entitlement that was intended to help most Americans? In many ways, the battle over health reform crystallized an emerging narrative about Barack Obama's political agenda. First, the enacted health plan raised serious questions about some of the president's core campaign promises. For example in Dover, New Hampshire, on September 12, 2008, he had stated unequivocally: "I pledge to you that under my plan, no one making less than \$250,000 a year will see any form of tax increase. Not income tax, not capital gains taxes, not any kind of tax." He embellished that point by noting that his opponent, Arizona Senator John McCain, "can't make that pledge" because he would tax employer-provided insurance. Yet not only did his health plan tax certain high-cost employer health plans, it also imposed at least a half dozen new taxes destined to affect families at all income levels. These included the individual mandate to purchase health coverage as well as excise taxes imposed on health insurers, pharmaceutical companies and medical device manufacturers—levies that most Americans understood ultimately would be borne by consumers in the form of higher premiums or medical bills. Anger was amplified when the administration denied during the congressional debate that the penalties imposed on noncompliers with the mandate constituted a tax; yet in subsequent legal briefs they prepared to defend the constitutionality of the new law, they argued that the individual mandate was a permissible use of the federal government's tax powers.

For Independents especially, one of the candidate Obama's greatest appeals was his promise to seek bipartisanship. More specifically, while campaigning in New Hampshire he told the *Concord Monitor*, "We're not going to pass universal health care with a 50-plus-one strategy." Yet even after Scott Brown's election complicated the prospects for passing a bill on a party-line vote, President Obama rejected the counsel to secure a compromise proposal that could attract some Republican support and instead found a way to get to "yes" only with votes from his own party. This reminded voters of when the president, shortly after his inauguration, pushed through a bloated stimulus bill without a single Republican vote in the House and only 3 Republican votes in the Senate. Historically, it was unprecedented for such a major piece of legislation to be enacted on a party-line vote. Republicans were quick to point out the large majority of congressional support behind Franklin Roosevelt's Social Security, Lyndon Johnson's Medicare, and Ronald Reagan's tax cuts during their presidencies.

Equally galling was the defiance of public opinion which had run for many months in opposition to the health plan. Although the first Tea Party protests had been sparked in February 2009 in reaction to bank bailouts and the "wasteful" stimulus bill, they gained momentum as anger built up over the health plan. When angry constituents confronted Democrats at town hall meetings during the August 2009 recess, many members suddenly feared for their seats. While moderates and swing voters hoped for cost control, the health plan instead included a massive expansion of coverage—half of which was achieved through public insurance (Medicaid) rather than private policies. The health plan mandated fixed levels of coverage with provisions bound to increase health insurance premiums for most Americans. These included requirements that insurers provide a broad range of preventive services with no cost-sharing, that lifetime coverage limits be abolished, and caps on the allowable levels of cost-sharing. The November gubernatorial races in Virginia and New Jersey emerged as referenda on health care and on Obama's ambitious progressive agenda. In a formidable revolt by independent swing voters, Republican governors were elected in both states. This slowed, but did not stop, the health reform juggernaut. Only days following these elections, the House passed the health bill by only five votes, as one-fifth of Democrats defected.

The health plan also amplified fears over more debt and taxes in the middle of a recession. These concerns had first been aroused by the \$700 billion Troubled Asset Relief Program (TARP), \$850 billion stimulus bill, and an Obama budget that projected adding \$9 trillion to the national debt over 10 years. However, these anxieties were not shared by progressives, including the president.

Many voters were also disgusted with seeing the congressional sausage-making process on full display in the scramble for votes. To ensure Senate passage on Christmas Eve, a series of deals was crafted to buy off Senators from states that had been Republican in recent elections. These included \$300 million to Democrat Mary Landrieu in Louisiana (derisively named the “Louisiana Purchase” by Republicans), millions more to Democrat Bill Nelson in Florida (“Gatoraid”), and millions in exemptions from Medicaid to Nebraska Democrat Ben Nelson (“Cornhusker Kickback”). In Massachusetts, a state that Obama had won by 26 points in 2008, Democrats had expected to easily win the special election to fill the Senate seat of Democrat Ted Kennedy, who had died the previous August. But just after Senate passage of the bill, Republican Scott Brown, promising to be “the 41st vote against health care,” began overcoming what at one point had been a 30-point lead to gain significant ground on his rival, Democrat Martha Coakley. On January 19, Brown won by five points in a stunning upset propelled by Independents who made up more than half of the vote. In 2008, these voters had swung to Obama by almost two to one, but by 2010 chose to vote for Republican Scott Brown by nearly the identical margin.

What Were Democrats Thinking?

From the Democrats’ standpoint, passage of health care reform was a historic achievement after a century-long struggle starting in 1912, when Theodore Roosevelt became the first presidential candidate to champion national health insurance as a member of the “Bull Moose Party.” Though Teddy Roosevelt became the first and only third-party presidential candidate in history to place second in popular voting, another progressive (albeit more conservative), Woodrow Wilson, won the day. While Roosevelt lost, virtually the entire platform he ran on in 1912 was eventually enacted into law, ranging from minimum wages to workers compensation to Social Security. The lone exception was national health insurance. This issue was never pushed by President Wilson, who instead promoted major financial reforms in his early years (creation of the Federal Reserve, and the Sixteenth Amendment income tax, etc.) and then was diverted by World War I and his unsuccessful effort to create a League of Nations. State initiatives to establish tax-financed health care were ultimately defeated by strong opposition from physicians who successfully exploited public fears about communism to squelch these early efforts.

The issue remained so contentious that Franklin Roosevelt (FDR) stripped national health insurance from his Social Security bill of 1935 for fear of potent opposition from doctors. FDR was also diverted by a world war. Thus, national health insurance remained an important piece of unfinished business that Roosevelt pledged to take up once World War II was over. However, he died before that war ended. Harry S.

Truman enthusiastically took up the cause afterwards but the unpopularity over his handling of postwar matters culminated in the Republicans taking control of both chambers in Congress. This stymied Truman's efforts to enact a plan for universal coverage, so he ran in 1948 making his health plan part of his campaign along with a companion critique of the "Do Nothing" Republican Congress. Although widely expected to lose, Truman squeaked by with what is regarded as the biggest upset in presidential election history. The Democrats retook both chambers of Congress, but this was insufficient to overcome a massive public relations campaign by the American Medical Association to turn the American public against what they called "socialized medicine" — a moniker that very effectively played on Cold War fears.

Progressive reformers settled on championing universal health coverage for the elderly rather than the entire population—an aspiration ultimately achieved in the aftermath of Lyndon Johnson's landslide victory in 1964, accompanied by the Democrats achieving two-thirds majorities in both the House and Senate. Once Medicare was enacted in 1965, reformers always presumed that at some point, a political majority could be attained to gradually expand Medicare one population group at a time (e.g., children), eventually culminating in "Medicare for All." But subsequent failures by Presidents Nixon, Carter, and Clinton to enact various forms of national health insurance made this a high-priority piece of unfinished business for progressives.

In this context, President Obama opted to go for broke on the health reform bill. The House and Senate passage of health reform was the furthest any such initiatives had reached in the entire century-long struggle to achieve universal coverage. Having come so far, no one wanted Scott Brown's unexpected election to stand in the way of what weeks earlier had appeared to be the inevitable passage of health care reform. To convince moderates from swing districts to risk political lives, President Obama essentially argued that failure to pass the bill would be catastrophic for his presidency and the ambitious agenda Democrats had hoped to pursue. White House Chief of Staff Rahm Emanuel argued that the central lesson of 1994 was that Democrats had lost Congress because of their failure to enact health reform, so it would be unconscionable to let history repeat itself. For the president and Democratic leadership, the risks of inaction far outweighed the risks of voter backlash from passing a bill that appeared in the short term to be unpopular.

Implications for House and Senate Races

The Republicans need 10 seats to regain an outright majority in the Senate. As of late September, RealClearPolitics.com projected a net gain of eight Senate seats for Republicans, with six seats viewed as toss-ups, including that of Senate Majority Leader Harry Reid. Senator Reid's role in what even the progressive president of Physicians for a National Health Program characterized as "sordid deal-making" to obtain enough votes to secure passage of the health bill is a major factor that has put his seat in jeopardy. His defeat would be reminiscent of the departure of Senate Majority Leader George Mitchell (who declined to run in 1994) in the aftermath of the demise of the Clinton health reform plan. However, Republicans nominated Tea Party candidate Sharron Angle to run against Reid; Angle began with an 11-point margin over Reid but the latest RCP Average now shows Reid with a small edge of 2.5 percent. One incumbent Democrat who seems destined for defeat is Blanche Lincoln of Arkansas. According to the *Washington Post*, Lincoln "practically begged the president to repudiate 'extreme' liberals—a clear reference to the Nancy Pelosi-led House—and tack to the center" during the health reform debate.

In the House, the Republicans need 39 seats to reclaim the majority. There are 40 Democrats running in districts won by John McCain in 2008; 41 percent of them voted in favor of the health care bill. What complicates the picture is that 82 percent of these same members voted for the unpopular stimulus bill, while 44 percent voted for the cap and trade bill that was viewed as unnecessary and a violation of President Obama's pledge not to increase taxes on households earning below \$250,000. In many of the critical races, votes on these major Obama initiatives have become important campaign issues, but health reform is not going to be the sole decider. A handful of these vulnerable Democrats are actually somewhat benefited since hard-line conservative candidates have defeated their more "mainstream" Republican rivals. Should they retain their seats, it will not necessarily signal that their constituents favored health reform; it may simply mean that voter anger over the health plan was swamped by greater concerns over extremist" right-wing views.

Why Voter Anger Over Health Reform Is Unlikely to Die

The decision to pass the health plan on a party-line vote was made on the presumption that Republicans would not dare oppose a new entitlement that had become popular with the voters. Democrats recalled that despite strong opposition to Medicare in some quarters, it eventually became a "third rail" of politics that few politicians dared touch for fear of the backlash from Medicare beneficiaries. Republicans, however, reached the opposite conclusion. Consequently, in late May, House Republican leaders

introduced a bill to repeal and replace the new healthcare law. Thus, many House Republican candidates will have a strong incentive to keep this issue alive by reminding voters of their willingness to eliminate an unpopular law.

But such efforts are not limited to Congress. On August 3, Missouri became the first state to pass a ballot measure aimed at nullifying the health care law by invalidating the requirement that most people obtain insurance or pay a tax penalty. Comparable measures had already been enacted by legislatures in five states—Arizona, Georgia, Idaho, Louisiana, and Virginia—but Missouri was the first to directly test how the public would vote. Voters approved the measure by a larger margin than expected, 71 to 29 percent, which opponents cited as evidence that voter anger over the issue has not dissipated.

Other states are seeking to nullify the law through constitutional amendments. Voters in both Arizona and Oklahoma will have a chance to vote on November 2 on state constitutional amendments to nullify the individual mandate. In these states in particular, opponents of the law will be motivated to employ voter outrage to encourage higher turnout and a large margin of support for these ballot initiatives.

In addition, elected officials in 22 traditionally Republican states have filed lawsuits to challenge the individual insurance mandate on grounds of its unconstitutionality. Most legal scholars believe that the Supreme Court will declare the law constitutional, but this will not happen before 2011, at the earliest. In the meantime, a federal judge in early August refused to block Virginia's legal challenge—setting a precedent that the critique is valid. This favorable ruling for the law's opponents enables them to keep alive the argument that Congress and the president have overstepped their constitutional authority.

For the most part, bad news about the new health law has outweighed the positive benefits that are being implemented prior to the election, such as permitting 26-year-olds to remain on their parents' coverage, and eliminating preexisting condition restrictions for children. However, elderly voters have tended to harbor a more negative view of the health plan than others. A big unknown is how seniors will react to one of the more tangible benefits of the new law: More than 750,000 Medicare recipients with high prescription costs each received a \$250 government check. More than three million additional checks will be distributed to those in the "doughnut hole," where their out-of-pocket liabilities can reach thousands of dollars. The \$250 subsidies represent a down payment towards the eventual close of the doughnut hole in 2020. In 2011, the law will provide a 50 percent discount on brand name drugs in the doughnut hole, along with a smaller price reduction for generics. It remains to be seen how the \$500 billion in Medicare cuts (which

keep the price tag for the health law under \$1 trillion) will adversely affect seniors' perception of their care. For every senior mollified by these \$250 checks, there could be other voters anxious about deficits and angry about bailouts who become antagonized by the appearance that the administration is trying to buy elderly votes.

While trying to quantify the magnitude of the health law's impact, the weight of the evidence suggests there will be adverse consequences for the electoral prospects of Democrats. Of all the House and Senate seats that appear likely to change political parties, it is not just because an incumbent voted in favor of the health care bill. The broader significance of the health plan on electoral politics in general was perhaps best summed up by Noemie Emery of *The Weekly Standard*: "Obama's health care reform may live, it may die, or it may limp along in tatters, but it has already changed history: The prospect of an enduring center-left governing coalition, which a year ago seemed a distinct possibility, is now gone."