



Obamacare's Legacy Is in the GOP's Hands

Republicans can either cement Obama's vision for health care or be inspired to create their own.

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On health reform, President Barack Obama achieved that which eluded the Democratic Party for a century. The Affordable Care Act created a government guarantee of access to health care for all Americans. In this, Obama bested presidents Harry S. Truman, Lyndon B. Johnson and William J. Clinton. Americans have not exactly embraced "Obamacare," though official estimates do indicate the uninsured rate fell from 14.5 percent in 2013 to 9.4 percent in 2015.

Whether that guarantee and those coverage gains will improve access to health care remains an open question. Health insurance premiums in the individual market have doubled since that guarantee took effect, coverage for the sick is eroding, and the law's health insurance exchanges are teetering near collapse.

Still, give the man his due. Obama secured passage of and protected Obamacare despite its instant and enduring unpopularity. The polling aggregator HuffPost Pollster reports 48 percent of Americans oppose the law and only 44 percent support it, a split that has remained essentially unchanged for seven years. To protect his achievement, Obama artfully, though not always lawfully, outmaneuvered a Republican Congress, seeing the law through more near-death experiences than a cat on its ninth life.

Somewhat ironically, while Obama spent seven years refusing to work with Republicans on health reform, the GOP has collaborated with Obama on two elements of his health reform legacy and will write a third element all by themselves.

The first area of collaboration is the hyper-partisanship now permeating the health care debate.

Many Republicans were happy to support Obamacare so long as the GOP got the credit, such as when Gov. Mitt Romney imposed an identical law in Massachusetts. Republicans' change of heart came at about the same time Obama took office and Senate Minority Leader Mitch McConnell, R-Ky., unsubtly told reporters his job was to make Obama a one-termer. To reconcile their opposition to Obamacare with their support for Romney as their 2012 presidential nominee, Republicans engaged in logical gymnastics that would have caused blushing in creatures capable of it.

Yet Obama even outdid Republicans when it came to partisanship. Obama swore an oath to uphold the U.S. Constitution by faithfully executing the laws. Had he honored that oath, bipartisanship would have broken out all over.

When Obamacare threw 5 million Americans out of their pre-Obamacare plans in 2013, for example, Democrats would have joined Republicans to make good on Obama's promise that "if you like your health plan, you can keep it." When the employer mandate began to impose unacceptable burdens on employers in 2014, Democrats would have worked with Republicans to provide relief. Had Obama subsidized private insurance companies only when federal law allows, Obamacare would have failed to launch, and both parties would have joined to overhaul it. Had he enforced the pay cut of up to \$12,000 Obamacare imposes on members of Congress, Republicans and Democrats would have held hands to sing "Kumbaya" while giving each other a pay raise.

Rather than implement the law as written and let voter dissatisfaction work its way through the political process, Obama stepped outside the law. He expanded Obamacare's benefits and hid its burdens in a manner carefully calibrated to deny congressional Republicans any cooperation from congressional Democrats. He subsidized private insurance companies and members of Congress where federal law says he cannot, encouraged insurance companies to sell illegal pre-Obamacare plans and delayed implementation of the employer mandate, something even allies said he had no authority to do. This was all to take the heat off congressional Democrats who otherwise would have cast unwelcome votes.

It is difficult to imagine a surer way to doom bipartisanship than for the president of the United States to step outside the law for the purpose of altering congressional deliberations and effectively disenfranchising his opponents.

The second element of Obama's health care legacy is a consequence of the first: unified Republican control of government.

Obama's symbolism and rhetoric will place his presidency in a positive historical light.

After the 2014 elections, instead of accepting that voters' choice of a Republican Congress might restrain his ambitions, Obama declared, "We are not just going to be waiting for legislation ... I've got a pen, and I've got a phone."

When the president tells the opposition "elections have consequences" when he wins but not when he loses, it breeds resentment. That not only energizes the opposition, but also creates a precedent of stepping outside the law, and causes them to demand leaders who themselves will step outside the law. As if to say, "we'll see your strongman-president and raise you a stronger one."

The third element of Obama's health care legacy has yet to be written, and depends entirely on Republicans. President-elect Donald Trump and congressional Republicans have vowed to repeal and replace Obamacare – or instead, they may end up rescuing it.

If Republicans repeal Obamacare and replace it with reforms that move in the direction of better, more affordable and more secure health care – such as by fulfilling Trump's pledge to replace

Obamacare by expanding tax-free health savings accounts – Obama's health care legacy will be that of a catalyst. He will be the Democrat who finally made Republicans care about health care reform.

But things could still break the other way.

If Republicans fail to repeal Obamacare, or replace it with Obamacare-lite – a modified version of the law's central architecture: government price controls on health insurance, plus government subsidies in the form of "refundable tax credits" that double as a de facto individual mandate – they will grant Obamacare the bipartisan support it has lacked since day one. Under this scenario, Republicans would cement Obama's legacy as the president who successfully imposed his health care vision on all Americans – with a little help from his enemies.

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