



[Jim Powell](#), Contributor

7/04/2012 @ 6:42PM | 2,926 views

Mitt Romney's "Secret Weapon" - If He Can Bring Himself To Use It

"Candor is a lethal weapon. Romney could proclaim, with devastating effect, that America desperately needs a president who can learn from his mistakes and be candid with the American people." (Photo credit: Wikipedia)

By upholding Obamacare, Chief Justice John Roberts has given Mitt Romney a significant opportunity in the election campaign. But he could blow it if he doesn't use a "secret weapon."

The Supreme Court decision assures that Obamacare will be among the top campaign issues, and polls continue to suggest that a majority of voters don't like it.

Roberts offered what might become known as trans-gender justice (first it's one thing, then it's another) that seems to have outraged many independents as well as Republicans who want to uphold the Constitution, not sanction arbitrary power. Roberts' decision could spur a higher turnout among voters critical of Obamacare.

Roberts ruled that the Obamacare mandate is simultaneously a "penalty" and a "tax," an unprecedented claim apparently first advanced by the Obama administration's lawyer during oral arguments last March. As a [New York Times](#) headline put it, "The [Health](#) Mandate Is Not A Tax, Except When It Is."

The idea could have come straight out of *Alice in Wonderland*. "If I had a world of my own," Alice thought, "everything would be nonsense. Nothing would be what it is because everything would be what it isn't. And contrary-wise; what it is wouldn't be, and what it wouldn't be, it would. You see?"

In their dissenting opinion, justices Scalia, Kennedy, Thomas and Alito wrote that Roberts conjured "a creature never hitherto seen: A penalty for constitutional purposes that is also a tax for constitutional purposes. Of course, in many cases what was a regulatory mandate enforced by a penalty could have been imposed as a tax upon permissible action; or what was imposed as a tax upon permissible action could have been a regulatory mandate enforced by a penalty. But we know of no case, and the Government cites none, in which the imposition was, for constitutional purposes, both."

Roberts didn't review the law as he found it. He arbitrarily rewrote the law, performing a legislative function. The law described the mandate as a penalty, not a tax. Obamacare was never sold as a tax. Members of Congress didn't pass it as a tax. The administration hoped the law would be constitutional on the basis of the ever-expanding Commerce Clause. Roberts upheld Obamacare by asserting an unlimited taxing power.

As a tax, the mandate violates Obama's solemn vow never to sign a middle class tax hike. "If you are a family making less than \$250,000," he promised during the 2008 campaign, "you will not see your taxes go up. Not your capital gains tax, not your payroll tax, not your income tax. No tax!" Many voters will get tax bills rather than health care freebies, and they could become angry when they realize they elected the Wizard of Oz.

Romney's options? He has repeatedly critiqued Obamacare, and he has vowed to start repealing it on day one of his administration, if he wins the election.

Romney will have to go beyond his critiques of Obamacare, however, and offer a simple alternative with specifics. Ronald Reagan campaigned successfully with just three key points. The simpler Romney's proposed program, the more people will be able to remember it and support it. Romney will go nowhere with a health care plan as bulky as his 59-point jobs plan.

Romney's health care plan should offer everyone more choices and provide incentives for people to be concerned about costs, like consumers of other services. Health insurance must belong to individuals and be portable, rather than tied to employers via business expense tax deductions. Romney's plan should foster competition, not a witches' brew of extortion and regulatory breaks that marked the Obama administration's back-room dealings with Big Pharma. Certainly consumers should be free to buy health insurance across state lines. It should be legal to buy inexpensive health insurance policies offering the most basic coverage. People shouldn't be forced to pay higher premiums that subsidize other people's risks, some of which (like smoking and obesity) are affected by lifestyle choices. It doesn't make sense to try helping the minority without health insurance by adopting a system (Obamacare) that would cause millions of people to lose health insurance coverage they want to keep.

In addition to questions about Romney's plan, many people wonder whether the Republican Party has the resolve to repeal Obamacare.

During the 1960s, there was talk about repealing Medicare, but obviously nothing came of that. Republican President Richard Nixon actually expanded Medicare, Medicaid and Social Security benefits. Reagan promised to abolish the Department of Education (which didn't educate anyone) and the Department of Energy (which didn't produce any energy), but those bureaucracies are still around – with bigger budgets than ever. Republican President George W. Bush ushered in a new Medicare entitlement, the prescription drug program. When President Obama announced his plan to help pay for Obamacare by cutting \$500 billion from Medicare, Republicans rushed to defend Medicare – the entitlement that's going broke the fastest.

The most important issue for Romney is skepticism about his resolve, since the government-run health care plan he promoted in Massachusetts was a model for Obamacare. Romney has steadfastly defended Romneycare. He has strained credibility by insisting that government-run health care is okay for a state but not for the federal government.

Government-run health care, whether at the state or federal level, tends to have similar problems. When government taxes the general population, then channels some of the proceeds into a particular sector, this can drive up costs in that sector. State health care subsidies (as in Massachusetts) generate upward pressure on health care costs there, and federal health care subsidies generate upward pressure on health care costs across the country. Governments commonly try to control costs by introducing price controls that make it harder to provide health care. This is why many doctors stop accepting Medicare or Medicaid patients. In addition, there are rationing boards that determine who will be permitted to get various procedures and medications – and who will be denied. Elderly patients are most likely to be denied.

Since Roberts issued his decision, the president has been busy reminding everybody that Obamacare, including the mandate, was based on Romneycare.

What is Romney going to say when he debates Obama? The president will have an opportunity to ask how Romney could seriously criticize Obamacare, since he never disavowed Romneycare.

The public is likely to become increasingly confused as Romney critiques Obamacare while continuing to suggest that Romneycare is doing fine.

As long as Romney declines to acknowledge that Romneycare was a mistake, Obama will be able to keep him on the defensive.

Yet how fast the tables would turn if Romney uses a secret weapon: namely, candor. It's something seldom seen around Washington. Suppose Romney candidly acknowledges that he's human, and he makes mistakes, but he's capable of learning from experience.

Romney could add, with devastating effect, that America desperately needs a president who can learn from his mistakes and be candid with the American people.

Political leaders have been hailed when they switched from a bad policy to a good policy. Remember how Bill Clinton opposed the Republican welfare reform bill that arose from the Republicans' Contract with America? Then he did his famous pirouette, signed the bill, it succeeded in reducing welfare dependence and encouraging employment among the poor, and Clinton went on to win a second term.

Romney's mistake with government-run health care in Massachusetts is a policy mistake, not something serious like a moral shortcoming. In any case, voters have forgiven many moral shortcomings. Clinton's supporters didn't abandon him because of his Oval Office escapades, even after he was impeached. The press remained spellbound by John F. Kennedy, despite his hyper-womanizing. Grover Cleveland was accused of fathering an illegitimate child, and his opponents coined what seemed to be a devastating slogan, "Ma! Ma! Where's my pa?" But Cleveland displayed courageous candor. He acknowledged that he had an affair with the woman in question and that it's possible he was the child's father. Well, Cleveland won the election, which led to a second slogan gleefully answering the first one. The entire string became: "Ma! Ma! Where's my pa? Gone to the White House! Ha! Ha! Ha!"

What voters don't like is blatant lying. Nixon, of course, is Exhibit A. With his back room scheming and his claims of Executive Privilege, he engineered the Watergate cover-up to hide incriminating evidence. The cover-up turned out to be worse than the botched burglary at the Democratic National Committee offices. The ensuing scandal was not unlike the situation Obama's Attorney General Eric Holder finds himself in now for refusing to provide documents—now hidden behind Executive Privilege—about the administration's botched "Fast and Furious" scheme that channeled semi-automatic weapons to Mexican drug lords and resulted in the death of a U.S. border patrol agent.

So it's difficult to understand why Romney stubbornly refuses to acknowledge that Romneycare was a mistake. Maybe he fears Obama will hammer him relentlessly for his candor. He might be called a flip-flopper (again). But since most voters seem to dislike Obamacare, they must dislike Romneycare, too. Far from being antagonized by Romney's candor, the anti-Obamacare and anti-Romneycare majority would probably congratulate Romney for coming home at last, after his time in the wilderness.

People don't typically pile on a person who acknowledges his mistakes. People tend to be forgiving, because everyone makes mistakes. People admire candor and humility.

It takes a strong person to publicly acknowledge his mistakes, and a Romney moment of candor could dramatically display his strength and enhance his personal appeal. He would show himself to be human, vulnerable and bold. Such candor could electrify his campaign and improve prospects for replacing Obamacare with commonsense health care reforms.

If Romney is ever going to make such a bold move, now is the time, amidst the groundswell of outrage at the administration's high pressure tactics that intimidated the chief justice and threaten our future.

[Jim Powell](#), a Senior Fellow at the Cato Institute, is the author of *FDR's Folly*, *Bully Boy*, *Wilson's War*, *Greatest Emancipations*, *Gnomes of Tokyo*, *The Triumph of Liberty* and other books.