



## ***A mandate on who?***

Tuesday, June 19, 2012

The Supreme Court has only a week and a half to make a decision on the Affordable Care Act. They have nine cases left to rule on, including on the Arizona immigration law, and are expected to announce those decisions either this Thursday June 21st, and on Monday and Thursday of next week, June 25th and 28th. So one of those days, we are likely to get a ruling.

But how did we get here, to a constitutional challenge to this law, that was so obviously constitutional just a few years ago that many scholars believed it would be a unanimous decision at the Supreme Court, if it came up at all ?

[Ezra Klein in The New Yorker](#) recounts a bit of history of the individual mandate, and how Republicans changes their thinking en masse from helping formulate the idea of the individual mandate to opposing it and thinking it unconstitutional.

His article is interesting about how people are swayed by the group they belong to--understandably, we rely on trusted institutions and messengers to indicate how we think on the many topics of the day, even when presented with facts that don't fit. This is clearly the case with the Affordable Care Act--the main predictor of one's position on health reform is party identification--Republicans know they should oppose it, Democrats that they should support it, even when they may not know all the details. Education about the provisions doesn't sway many--except independents and those largely disengaged from politics.

But why did GOP leaders reject the health plan? A main driver was that the Republican leaders were set to oppose the President's health plan, regardless of its content--they wanted to deny him a win. More than that, as the Cato Institute and others suggested, a successful health reform law could not just benefit the President for his re-election, but has the potential for re-ordering politics in the nation, establishing a different sense of the social contract, and showing that governmental action could actually make progress on social issues.

On the individual mandate, there's an interesting evolution as well. When Governor Schwarzenegger embraced a plan that included an individual mandate, he took an ideological journey few other Republicans were willing to go even before the issue became more politicized and polarized. It started with his conservative worldview--the uninsured were "free riders," placing a burden on emergency rooms, and the uninsured needed to take "personal responsibility" and get coverage.

But to the Governor's credit, he recognized that "shared responsibility" was not just for individuals

but for government as well. He showed he took seriously the barriers that people faced in getting coverage: a mandate requires government to force insurers to take everybody regardless of pre-existing conditions; to expand public programs and provide subsidies to those who can't afford coverage; to raise revenues to pay for those subsidies; and to ensure employers continue contributing into the health system as well. For consumer advocates, who were already focused on the barriers to getting coverage, these were long-sought reforms. (And from his original proposal to the final compromise, the Governor moved, even in areas, like the employer requirement, he had vigorously campaigned against earlier in his term.) But the mandate made them necessary, rather than merely important.

But no California Republican legislator joined Governor Schwarzenegger on this ideological journey. And when Senator Baucus was negotiating with GOP Senators to get their support in 2009, both Senators Grassley and Snowe made statements starting to realize that the mandate kept forcing them to consider policies that otherwise they would reject. They started to see that the individual mandate was as much a mandate for policymakers to act affirmatively to resolve health care problems. After all, if the government is going to require you to have health coverage, it has the responsibility to ensure it is available, affordable, and administratively simple.

Even though coverage is basically a necessity of living in the modern world, the government to date has largely shrugged off our many health problems, from rising premiums to many more uninsured, as simply forces of nature, rather than a policy challenge to be solved.

So while I may disagree with those who oppose the Affordable Care Act, I understand why they would be opposed to the individual mandate, and more likely, to its implications. That still doesn't make their opposition consistent, or that the law is unconstitutional. But the Court will have its final say in the next two weeks.

posted by *Anthony Wright* | [Permalink](#) | 12:50 AM