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The Genius of the Mandate

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WHEN the Obama White House set out to make the liberal dream of universal health coverage a reality, it faced two obvious political obstacles. The first was the power of the interlocking interest groups — insurance companies, physician associations, pharmaceutical companies — that potentially stood to lose money and power in a comprehensive reform. The second was the price tag of a universal health care entitlement, which promised to be high enough to frighten vulnerable members of Congress.

The key to overcoming both obstacles, it turned out, was the mandate to purchase health insurance.

In arguments before the Supreme Court last week, the health care mandate was defended as a kind of technocratic marvel — the only policy capable of preventing the complex machinery of reform from leaking smoke and spitting lug nuts.

But the mandate is actually a more political sort of marvel. In the negotiations over health care reform, it protected the Democratic bill on two fronts at once: [buying off some of the most influential interest groups](#) even as it hid the true cost of universal coverage.

The mandate offered the interest groups what all entrenched industries desire: a fresh and captive market for their products. For the insurance companies, it promised enough new business to offset the cost of covering Americans with pre-existing conditions. For the health care sector as a whole, it guaranteed that disposable income currently being spent on other goods and services would be spent on its instead.

This explains why the health care bill was ultimately backed by so many industry lobbying groups, from the Pharmaceutical Research and Manufacturers of America to the American Medical Association. It explains why the big insurers, while opposing the

final legislation, never attacked it as vigorously as they did Bill Clinton's ill-fated reform effort.

At the same time, by requiring the private purchase of insurance, the mandate kept the true cost of the health care expansion off the government's books, and largely out of the Congressional debate. As the Cato Institute's Michael Cannon has noted, during the Clinton era the [Congressional Budget Office scored an individual mandate](#) as a form of government spending, which pushed the official cost of the Clinton bill into the trillions. But the Obama White House was savvier in its mandate design, and the C.B.O. was more compliant in its scoring. As a result, a bill that might require [over \\$2 trillion in new health care spending](#) — private as well as public — over its first decade was sold with a \$900 billion price tag.

So the mandate was politically brilliant, in a sense. But its brilliance was evanescent. Founding a new entitlement on an insider-friendly sleight-of-hand made the bill much easier to pass. But it's made it harder to defend thereafter, both in the court of law and the court of public opinion.

The [mandate's constitutionality is a thorny issue](#), and conservatives normally skeptical of judicial activism should probably be a little less eager to see major legislation set aside by a 5-to-4 majority. But the provision is unpopular enough that it's unlikely to survive in the long run even if Anthony Kennedy flips a coin and decides to uphold it.

Liberals are counting on the fact that "only" [seven million Americans](#) will be initially exposed to the mandate's requirements. But as the [economist Tyler Cowen](#) notes, there's every reason to think that rising health care costs will make the mandate more burdensome with time. And a provision that's already become a symbol of [government overreach](#) seems unlikely to become more popular once there are thousands of individuals and businesses with concrete [grievances](#) against it.

The reality is that the more treatments advanced medicine can offer us (and charge us for), the harder it becomes to guarantee the kind of truly universal, truly comprehensive coverage that liberals have sought for years. The individual mandate conceals these realities, but it doesn't do away with them. If it's repealed or swept aside, both left and right might be able to focus on a more plausible goal: not a perfectly universal system, but more modest reforms that would help the hardest-pressed among the uninsured.

For conservatives, these reforms might look like the [proposals that James Capretta and Robert Moffit outline](#) in the latest issue of National Affairs — a tax credit available to people whose employers don't offer insurance, better-financed high-risk pools and stronger guarantees of continuous coverage for people with pre-existing conditions.

Liberals, for their part, would probably focus on gradually expanding Medicaid and Medicare to cover more of the near-elderly and the near-poor, [creating a larger public system](#) alongside the private marketplace. Indeed, the White House [apparently considered switching](#) to exactly this approach in the aftermath of Scott Brown's surprise Senate win.

In the end, incrementalism wasn't ambitious enough to satisfy President Obama. But given the drift of last week's Supreme Court arguments, he may be wishing that he'd settled for something less ideal, but more sustainable, than the bill the mandate built.