

Mandate by Dan Jacoby

Almost to the moment President Obama signed the healthcare insurance reform legislation into law, about a dozen state attorneys general filed a lawsuit claiming that the provision requiring most Americans (there are exceptions) either to have health insurance or pay an extra tax. The lawsuit claims that this is a “mandate” to purchase something from a private company, and therefore exceeds the federal government’s constitutional authority.

There is a lot of debate over whether their case has merit, or whether it will succeed (the two are not necessarily related). What nobody seems to be talking about is the politics of the situation. It may not matter, politically, what the Supreme Court ultimately does; this could turn out to be a “heads I win, tails you lose” proposition.

Let’s start with the easy question: What if the law is upheld?

In that case, not only does the new law have full effect, but President Obama and the Democrats also get a tremendous boost from an activist, right wing Supreme Court that most people think would be willing to take Democrats down every chance they get (remember, they’re even farther to the right than the Court that ruled in *Bush v. Gore*). Such a ruling could cause all Republicans, not just their tea party allies, to come completely unglued.

Suppose, instead, that the Supreme Court rules that this provision is unconstitutional. In that case, Republicans will get a short-term boost, because they will be able to claim that the Democrats are tax-and-spend tyrants with no regard for the Constitution.

The problem is that the Republican victory will be extremely short-lived. Health insurance companies will be forced to take on sick customers while losing healthy ones – after all, who would want to pay for health insurance if they don’t need it and can just sign up whenever they get sick? The result would be disastrous for the health insurance industry, and will most likely lead to a single-payer system as the only way to provide coverage for everyone. Then the Republicans will lose an enormous base of support in the form of campaign contributions from the defunct healthcare insurance industry.

The third possibility, and one with the fewest political consequences, is that the Supreme Court refuses to take the case. This ruling would be not on the merits of the lawsuit but because they decide that a state attorney general doesn’t have standing since there is no deprivation of that state’s rights. The Court could rule that the only people with standing are those who receive a tax bill for failure to get health insurance, and that won’t happen until the mandate begins in 2014. In other words, the Supreme Court could kick this case down the road, hoping that what is currently a no-win situation for their right-wing activism might change in four years.

Of course, by 2014 the odds are that people will, at the very least, have become accustomed to the new way, and Democrats might even have succeeded in pushing through real healthcare reform, not just health insurance reform. In that case, it would be a minor loss for Republicans (and tea partiers), but any political effect would just fizzle out.

That’s the most likely outcome.