

Chief Justice Roberts' Smart Vote on Health Care

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Only Chief Justice John Roberts can know why he decided to vote to form the majority on the recent court case seeking to overturn health care legislation. Nonetheless, his decision was enormously important in determining what health care will look like in the U.S. for years to come, as well as for political reasons which will shape the environment for this election and beyond. For far right activists, however, Roberts' decision must have felt like a punch in the gut. Perhaps when they recover from that initial shock they will also see it, at least partially, as a wake-up call.

The Supreme Court's decision takes a great deal of momentum away from the right wing who undoubtedly felt that turning over health care legislation would put the Obama administration on the ropes again, mobilize their own conservative base and provide further evidence for their belief that the Obama presidency has been a failure. It is hard to believe that the man who stopped all this from happening was Chief Justice Roberts. Roberts' ruling can be interpreted on legal and policy grounds, but it also needs to be seen through the prism of politics and institutional interests.

While it might seem like Roberts was ceding power to the executive by not helping overturn the health care bill, Roberts' decision also reflects that the power of the Supreme Court rests on complex foundations and that, if the institution does not enjoy public support or is viewed as too partisan, its power will dwindle. A party line vote overturning health care would have been another step towards a Supreme Court that would be seen as just another partisan branch of the government and would undermine respect for the court.

Nonetheless, the politics of Roberts' decision are, at least initially, very perplexing. Instead of being the man who overturned the singular piece of legislation most identified with President Obama and averting the socialist path down which, according to his foes, Obama has sought to lead America, Roberts saved health care -- becoming a temporary favorite of many liberals. This decision could not have come easily to Roberts. However, Roberts recognized the tension between his ideology and his institutional loyalty. He was smart enough to recognize that as Chief Justice he probably has many years left on the court, and that risking damage to the institution was too high a price to pay for being faithful to his ideology. Leading a court that is discredited and losing popularity and respect are not at all in the interests of Chief Justice Roberts -- and this is reflected in his decision on health care.

Accordingly, Roberts' decision is likely more accurately interpreted as tactical positioning rather than as something akin to an ideological conversion. Liberals who expect Roberts to be sympathetic to their concerns in the future will be quickly disappointed.

The right wing and other interests who led this challenge to the health care legislation obviously did not anticipate Roberts' decision. Not only have they failed to reach their goal, but they've handed Obama a victory and reinforced the tenuous administration talking point that this health care constitutes historic legislation. By fighting this bill again, and failing, again, the right wing succeeded in raising the positive profile of the bill while making Obama look like a winner.

Obama has been handed an unexpected and, to a significant degree, undeserved victory only a few months before the election because his opponents couldn't resist making one more attempt to defeat a bill that they had spent roughly two years fighting. Six months ago, the health care bill was a way to rally right wing opposition to President Obama; today it reminds the right wing of their own shortcomings. Moreover, the bill now has the implicit approval of the very conservative Chief Justice of the Supreme Court. The President's political advisors could not have scripted this better themselves. Given this, the smartest thing the Republican Party can do on health care now is to recognize that the law exists and stop trying to fight it. This should not be as hard as it might seem, particularly given the law's conservative pedigree.

The lesson here for the right wing is that attacking President Obama as a socialist and seeking to characterize his presidency not only as a failure, which is normal for political opponents of the president, but as an attempt to radically reshape America has run its course. When powerful and serious conservatives like John Roberts place their own interests, and those of the institutions they lead, above those of the far right, it should be clear that the movement needs to reevaluate and change tactics. This kind of insight and self-awareness, however, is basically unknown on the far right.