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Perspective

The Midterm Elections — High Stakes for Health Policy

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The stakes for health policy in the 2010 congressional elections are higher than they have ever been. The political parties are polarized. Policy divisions are deep. The challenges of implementing the Affordable Care Act (ACA) are enormous. The outcome of the 2010 congressional elections may well determine whether this landmark legislation succeeds or fails. Whatever the electoral outcome, the political battle over health care reform will continue into the 2012 presidential elections and probably beyond.

The evidence of party polarization is overwhelming (see table).[1] A majority of both parties ended up voting for the original Social Security Act, although Republicans had campaigned actively against it. Many members of both parties voted for the legislation that created Medicare and Medicaid, that revamped welfare, and that created Medicare drug coverage (Part D). Not so in 2010. Heavy Democratic majorities but not one Republican in the House or Senate voted for the ACA.

Although current political polarization is extraordinary, it is the substantive policy differences that have raised the stakes in the 2010 election. The most urgent question is how — or even whether — the ACA will be implemented.

The ACA is nothing if not ambitious. It proposes to enroll tens of millions of people in private health insurance plans through yet-to-be-created health insurance exchanges. It will provide millions of Americans with subsidies tied to income and health insurance costs. It will greatly expand Medicaid. It will set and enforce standards for private insurance. It will expand comparative-effectiveness research and accelerate the application of health information technology. It will create a new commission to oversee Medicare. It will field experiments and pilot programs to help control spending. And this menu is but a partial listing of the provisions of the 906-page bill. If permitted to run its course, the ACA promises to transform the U.S. health care system. But successful implementation poses remarkable challenges and will require adequate funding, enormous ingenuity, and goodwill from federal and state officials, as well as cooperation from private insurers, businesses, and private citizens.[2]

Republican opponents of the ACA have promised to seek its repeal. Although they oppose the mandated coverage and large new subsidies of the law, they promise to preserve its widely popular insurance-market reforms, including rules barring insurers from denying or canceling coverage and limits on the variation of insurance premiums.

Votes on Major Social Legislation.*

Bill	Total Vote For:Against	Republicans		Democrats	
		Yea	Nay	Yea	Nay
House of Representatives					
Social Security Act of 1935	372:23	77	18	288	13
Social Security Amendments of 1965 (Medicare and Medicaid)	307:116	70	68	237	48
Personal Responsibility and Work Opportunity Reconciliation Act of 1996	328:101	225	2	100	98
Medicare Modernization Act of 2003	220:215	204	25	16	189
Affordable Care Act of 2010	220:207	0	175	220	32
Senate					
Social Security Act of 1935	77:6	15	5	60	1
Social Security Amendments of 1965 (Medicare and Medicaid)	70:24	13	17	57	7
Personal Responsibility and Work Opportunity Reconciliation Act of 1996	78:21	45	0	23	18
Medicare Modernization Act of 2003	55:44	42	9	11	35
Affordable Care Act of 2010	56:43	0	40	54	3

* Party breakdowns may not sum to the total votes, owing to independent or other party votes. The tallies for the Social Security Act refer to the votes before the conference by each house; earlier votes had been more polarized — for example, for motions to recommit the legislation to committee, striking old-age assistance, the House yeas totaled 149 (including 95–R and 45–D), and the nays 253 (1–R, 252–D), and the Senate yeas totaled 15 (12–R, 3–D), and the nays 63 (including 7–R and 54–D). The Personal Responsibility and Work Opportunity Reconciliation Act was passed when Democrats controlled the House of Representatives and the White House and Republicans controlled the Senate. Data are from GovTrack and Sidor.[1]

In reality, however, this promise cannot be sustained without also retaining mandatory subsidized coverage. If insurers must sign up anyone who applies for coverage, and if variation in premiums is limited, people would have a powerful incentive to wait until the onset of serious illness to buy insurance at the regulated price. Such behavior would make it financially impossible for insurers to survive. Thus, sustaining insurance-market reforms virtually forces the government to implement a requirement that people carry insurance. And to make such a mandate affordable, subsidies are necessary to avoid causing gross hardship. In brief, the pledge to keep insurance-market reforms without both mandated coverage and subsidies is untenable.

Repeal of the ACA before 2013 is unlikely. Both houses of Congress would have to enact repeal legislation, which President Barack Obama would surely veto. Then, two thirds of both houses would have to vote to override that veto. After 2012, however, repeal could occur if Republicans win the White House and both houses of Congress and stick by their pledge.

A more serious possibility is that ACA opponents could deliver on another pledge: to cut off funding for implementation.[3] Here is how such a process could work.

Customarily, substantive legislation "authorizes" spending, but the funds to be spent must be separately "appropriated." The ACA contains 64 specific authorizations to spend up to $105.6 billion and 51 general authorizations to spend "such sums as are necessary" over the period between 2010 and 2019. None of these funds will flow, however, unless Congress enacts specific appropriation bills. In addition, section 1005 of the ACA appropriated $1 billion to support the cost of implementation in the Department of Health and Human Services (DHHS). This sum is a small fraction of the $5 billion to $10 billion that the Congressional Budget Office estimates the federal government will require between 2010 and 2019 to implement the ACA.[4] The ACA appropriated nothing for the Internal Revenue Service, which must collect the information needed to compute subsidies and pay them. The ACA also provides unlimited funding for grants to states to support the creation of health insurance exchanges (section 1311). But states will also incur substantially increased administrative costs to enroll millions of newly eligible Medicaid beneficiaries. Without large additional appro-

priations, implementation will be crippled.

If ACA opponents gain a majority in either house of Congress, they could not only withhold needed appropriations but also bar the use of whatever funds are appropriated for ACA implementation, including the implementation of the provisions requiring individual people to buy insurance or businesses to offer it. They could bar the use of staff time for designing rules for implementation or for paying subsidies to support the purchase of insurance. They could even bar the DHHS from writing or issuing regulations or engaging in any other federal activity related to the creation of health insurance exchanges, even though the ACA provides funds for the DHHS to make grants to the states to set up those exchanges.

That would set the stage for a high-stakes game of political "chicken." The president could veto an appropriation bill containing such language. Congress could refuse to pass appropriation bills without such language. Failure to appropriate funds would lead to a partial government shutdown. In 1994, leaders of the Republican Congress who pursued a similar tactic during the Clinton administration lost the ensuing public-relations war. In the current environment, however, one cannot be certain how political blame — or credit — for such a governmental closure would be apportioned or which side would blink first.

Whatever the outcome of such a political contretemps, debate over the ACA is certain to continue. Opponents can take political comfort in polls reporting that nearly half of Americans say that Congress should repeal most of the ACA and replace it with something else.[5] Since most major provisions of the ACA do not take effect until January 1, 2014, delaying tactics might eventually enable repeal. Electoral gains in 2010 will embolden ACA opponents. They will continue the fight on into the 2012 presidential and congressional campaigns. To be sure, this debate would give ACA supporters the chance to dispel the confusion and correct the misinformation on which much of the public opposition to the law is based.

Perhaps the more likely — and in some ways more troubling — possibility is that the effort to repeal the bill will not succeed, but the tactic of crippling implementation will. The nation would then be left with zombie legislation, a program that lives on but works badly, consisting of poorly funded and understaffed state health exchanges that cannot bring needed improvements to the individual and small-group insurance markets, clumsily administered subsidies that lead to needless resentment and confusion, and mandates that are capriciously enforced.

Such an outcome would trouble ACA opponents: their goal is repeal. It would trouble ACA supporters: they want the law to work. But it should terrify everyone. The strategy of consciously undermining a law that has been enacted by Congress and signed by the president might conceivably be politically fruitful in the short term, but as a style of government it is a recipe for a dysfunctional and failed republic.

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