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Supreme Court Decision on "Obamacare:" Why Roberts May Have Changed His Mind Between The Lines

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The Supreme Court's Decision to uphold the Affordable Care Act shocked Court watchers and Pundits alike. President Obama pulled victory from the jaws of defeat, while the Republicans may have pulled defeat from the jaws of victory. There is no doubt the American people come out the winners in this decision, but why did Chief Justice John Roberts change his vote, after writing much of the dissenting opinion of the Court's conservative bloc?

First, Roberts has a reputation as a legal scholar. Much of the Court's conservative bloc are ideologues who don't hold much a regard for the law. Roberts knew the law was within Congress' authority. He still threw the conservatives a bone by trying to categorized the Act as "a tax." In reality, the Affordable Act simply expanded the care already being offered by Medicare. It isn't single-payer like Medicare, because it offers patients choices to select care, but it forces those who don't enroll with some care provider to pay a penalty - thus earning the title of a "government mandate." In reality, the Act simply closes the huge gap in the social safety net that Health Maintenance Organizations (HMOs) created by being able to cherry pick who they would cover, and being able to deny treatment to people with expensive medical bills and people with preexisting conditions.

Conservative lawmakers and pundits only challenged the law because they had no power to stop it in the federal legislature. They saw the U.S. Supreme Court as a backstop against so-called liberal lawmaking and *thought* they had the majority on the court to overturn what they

are still threatening to repeal. "Obamacare" was so politicized that Republicans forgot about the law, and the rightness of the law - whether they liked the policy or not. Supreme Court decisions side with the law. They don't make up the law. Ideologues try to make up the law, then try to find case law to back it up. Roberts knew the law was on the side of the Affordable Care Act, and he was concerned about how history would view the Roberts Court in the aftermath of an unsubstantiated decision. Roberts, like Obama, understood the politics of the outcome - ideological rationale notwithstanding. Sometimes, you have to do the right thing regardless of what your friends want you to do. Roberts' friends wanted him to play politics...and he did, for a minute. But history will show Roberts was on the right side of history and the pundits were simply trying to score political points in an election year.

Consider this; It's been nearly forty years since the Court has been considered "activist." Not since the Burger Court decided a woman's right to choose in the decision of *Roe v. Wade*, in 1973, had conservatives even had to worry about a left-leaning high court. Reagan's appointments (four), of which two are still on the court (Kennedy and Scalia), pushed the Court from left of center to right of center - where it has been every since. George H.W. Bush's two appointments, one of which is still on the court (the infamous Clarence Thomas), cemented the Court in two decades of ideological review under the longest serving Chief Justice in U.S. History, William Rhenquist, thus ensuring that there would *never* be another *Brown* decision that would disrupt the social order of things to the degree the desegregation of society did. Roberts, a Bush II appointee, came on the court at a time when it had lost its ideological leader (Rhenquist) and its scholarly center, as Scalia and Thomas sought to politicize every legal decision during their tenure, while rarely having case law on their side. Laws that adversely affected vulnerable populations were upheld by the Conservative right. Many of them were unpopular with the American people and served the interest of an oligarchic few. But rarely did any of them pit two branches of government against each other. Most of them didn't involve acts of Congress.

The Constitution gives Congress the sole authority to legislate as "necessary and proper" to run the country. The Affordable Care Act was *both* necessary and proper. The anti-taxation rhetoric of the Tea Party doesn't strip Congress of the *right* to tax. Plain and simple. Nor does it abrogate Congress' power to regulate commerce. Health care is commerce. Roberts probably looked for loopholes to side against the act (which is why he wrote on both sides of the opinion) - and if he

was a real ideologue, he probably could have found one, but he is a legal scholar first and ideologue second. Ideology doesn't stand above the law - it never has. Ideology only skews *how* one can interpret the law. But the law is *still* the law. That's why Roberts reversed himself. He took an oath to uphold the law - not to uphold ideology. That's the tough lesson the Republicans just learned and it's why federal judges are appointed for life, to insulate themselves from the politics of the day. In the end, law - not politics - won out.

For many Americans, that's all they want out of the Court, judicial prudence. And that's what they got in the Roberts decision on the Affordable Care Act. More than a victory for the Obama Administration, the decision proved that judicial temperament is still intact.

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