bendbulletin.com The Bulletin

Bad start for health care plan

By Victor Davis Hanson

Published: July 08. 2012 4:00AM PST

Until last week, Chief Justice John Roberts was vilified as the leader of a conservative judicial cabal poised to destroy the Obama presidency by overturning the federal takeover of health care. But with his unexpected affirmation, Roberts suddenly was lauded as the new Earl Warren — an “evolving” conservative who at last saw the logic of liberal big government.

Among our elites — journalists, pundits and academics — liberal Supreme Court justices are always deemed “open-minded,” even as they are expected to vote in absolute lockstep liberal fashion. In contrast, a conservative justice is written off as reactionary or blatantly partisan when he likewise predictably follows his own orthodoxy — pressures that may well have affected Roberts if reports of an 11th-hour switch in his vote are true.

No surprise, then, that a surreal discussion followed the recent ruling of the high court. Our legal establishment expected that the four liberal judges would not deviate one iota in their affirmation of the health-care law, even as it hoped that a conservative or two would show judicial character by joining the liberals.

Democrats like activist federal courts to overturn — in matters of gay marriage, abortion, affirmative action and illegal immigration — ballot propositions and majority votes of legislatures fostered by supposedly illiberal and unsophisticated voters. But on health care, liberals — led by the president — made the argument that a wrongly activist Supreme Court should not dare to tamper with what an elected Congress had wrought.

President Barack Obama was incoherent in his commentary on the Supreme Court. Before the Roberts ruling, when most were betting that the president’s health care plan would be overturned — especially given the poor performance of Solicitor General Donald Verrilli in arguing the government’s case before the court — Obama was angry at the thought of such judicial activism. In a manner that did not reflect much knowledge of either the Constitution or the history of the republic, he thundered, “Ultimately, I’m confident that the Supreme Court will not take what would be an unprecedented, extraordinary step of overturning a law that was passed by a strong majority of a democratically elected Congress.”

Of course, the Supreme Court’s overturning of a law is not extraordinary or unprecedented. And the president’s bill did not pass by a “strong majority,” but barely squeaked through the House by seven votes. What was “unprecedented” was a presidential shot across the bow of the Supreme Court on the eve of a critical decision — especially given the fact that Obama would soon welcome the court’s activism in overturning most of a duly-passed Arizona immigration law that sought to enforce federal statutes.

To get the health care bill passed in the first place, the Obama administration swore that it was a mandate and not a tax raise, which would have contradicted his campaign pledge not to hike taxes on the middle class. Yet Verrilli worried that a mandate would be declared unconstitutional, so he argued in the chambers of the court that it was a tax — and a majority of justices agreed.

But then the Obama administration flipped again at the thought of raising taxes on the middle class and is now calling the mandate/tax a “penalty” — thanking the court for its wisdom while rebuking the means by which it came to it.

Conservatives have come to distrust federal courts that overturn legislative majorities. But this time, conservatives hoped that the Roberts Supreme Court would overturn “Obamacare” rather than the less likely scenario of a Republican president and a congressional majority in both houses doing it sometime in the future. In short, there is no consistent thing such as judicial activism or restraint — only court rulings that support a favored political agenda and then are scorned as activist or lauded as enlightened by the particular involved parties.

A big reason for all the hypocrisies and paradoxes is that the 2,409-page health care act is a mess. Even its creators cannot agree whether it involves a mandate, tax or penalty. The public doesn’t like or want it — at least the parts it must soon pay for. It was passed only on a strictly partisan vote and under shady means (remember the “Cornhusker Kickback”). Hundreds of friends of influential Democratic politicians have already had their companies exempted from what was sold as a wonderful change. The country is nearly insolvent and $16 trillion in debt, and yet poised to take on the largest social-entitlement program in a half-century.

This mess is only the beginning, since we won’t even feel the full effect (or cost) of the law for another two years. But we should assume that what starts out this badly will end even more badly.

— Victor Davis Hanson is a classicist and historian at the Hoover Institution, Stanford University, and the author of the just -released “The End of Sparta.”

---

www.bendbulletin.com