

New York Times lauds Supreme Court's "exquisite delicacy" in health care decision

Joseph Kishore
30 June 2012

For anyone seeking to follow American politics, there is a certain professional obligation to read the *New York Times*, the "newspaper of record." This obligation has less to do with the information that can be gleaned from its pages than the insight its commentaries and articles provide into the thinking of the Democratic Party milieu for which the *Times* speaks.

The *Times* specializes in serving up the lying hypocrisy of the liberal bourgeois establishment, which is then echoed by the various "left" defenders of the Democratic Party. As such, one of the newspaper's primary tasks is to lend a progressive veneer to the right-wing policies of the Obama administration.

The response of the *Times* to Thursday's Supreme Court ruling on Obama's health care program is a typical, although particularly disgusting and absurd, example of its propaganda in support of the administration. A few articles are worth singling out.

In "Roberts Shows Deft Hand as Swing Vote on Health Care," which appeared under the category of "news analysis," the newspaper's Supreme Court correspondent Adam Liptak heaps praise on Chief Justice John Roberts, who wrote the deciding opinion of the Court on the most significant element of Obama's bill, the individual mandate to purchase insurance from private corporations.

Referring to the statement of Justice Oliver Wendell Holmes Jr. that determining the constitutionality of a law is "the gravest and most delicate duty" of the Supreme Court, Liptak declares: "In finding a way to uphold President Obama's health care overhaul law on Thursday, Chief Justice Roberts performed the task with exquisite delicacy."

Liptak repeated a few paragraphs down that "the

chief justice's defining and delicate role in upholding the health care law will always be associated with his tenure."

What is the content of Roberts' "exquisitely delicate" ruling? It is in fact a politically motivated piece of hack work, a classic example of deciding the desired outcome first and constructing a tortured legal argument to support it. In this case, Roberts sought to uphold the health care reform law, which the predominant faction of the ruling class wants to maintain, while at the same time advancing right-wing interpretations of the Constitution that can be used to undermine existing corporate regulations.

This accounts for the "verbal wizardry," in the words of Justice Antonin Scalia's dissent, of Roberts' ruling. Roberts sided with Scalia and the other extreme right-wing justices in declaring that the individual mandate—which penalizes individuals for not purchasing private insurance—was not valid under the Commerce Clause of the Constitution. There has been a longstanding right-wing campaign against the Commerce Clause, which has been used as the constitutional basis for much of the New Deal and post-war corporate regulations and social reform measures. Roberts' ruling introduces a number of specious arguments to call into question its broader legal interpretation.

While establishing this thoroughly right-wing precedent, Roberts was nevertheless determined to uphold the law itself. The "reform" is part of a coordinated effort to cut health care costs for the government and corporations and shift these costs onto the backs of individuals.

Thus we have the conclusion that the law is constitutional on the basis of the government's ability to tax. Roberts practically pulled this argument out of

thin air, as the Obama administration has insisted, and indeed continues to insist after the ruling, that the penalty for not buying health insurance is not a tax.

In fact, to argue that the penalty is a tax, Roberts had to contradict his own ruling. In order to justify hearing the case, Roberts had to rule that the penalty is not a tax, since according to the Anti-Injunction Act, an individual cannot bring suit against a tax until after it has been paid—and the health care mandate does not go into effect until 2014. So the mandate is a tax and is not a tax in the same ruling.

If Roberts is exquisitely delicate, Obama is “historic,” also according to the *Times*. The passage and upholding of Obama’s health care reform leaves intact Obama’s “hopes of joining the ranks of Franklin D. Roosevelt, Lyndon B. Johnson and Ronald Reagan as presidents who fundamentally altered the course of the country,” writes Mark Landler under the headline, “A Vindication, With a Legacy Still Unwritten.”

The Supreme Court decision preserves “Mr. Obama’s status as the president who did more to expand the nation’s safety net than any since Johnson. It preserves a bill intended to push back against rapidly rising income inequality.”

A number of historians are brought in to argue this case, including Douglas G. Brinkley, who asserts that the health care overhaul is “the cornerstone of what could turn out to be one of the most extraordinary two-term presidencies in American history.”

Obama’s presidency has been about establishing “a view of government as a force for good, a great leveler and a protector of the middle class,” Landler continues. As for the challenge to the health care law, this is likened to the court challenges to Roosevelt’s New Deal in the early 1930s. “The lesson for this president, said David M. Kennedy, a historian at Stanford, is to forge a coalition robust enough to change the political landscape. Roosevelt was elected to a second term in a landslide in 1936, cementing the New Deal.”

Reality and history are stood on their heads. Obama’s health care law has nothing in common with the social reforms of the 1930s (including Social Security and major public works programs), or the Great Society reforms of the 1960s (including Medicare and Medicaid). In fact, it is part of a campaign to undermine and eliminate these social programs.

Led by Obama, the ruling class has responded to the

economic crisis by slashing hundreds of billions from health care programs at the state and federal level—including a \$500 billion cut in Medicare included in the health care law. To the extent that federal health care programs exist, they will provide the most minimal care. To this end, the Democratic administration, in close cooperation with the *Times*, has launched a campaign against “unnecessary” tests and procedures. This campaign will escalate now that the law has been upheld.

At the same time, corporations are cutting or eliminating their own health care programs, as part of a general attack on wages and benefits. Again, this has been encouraged by the Obama administration—including through the forced bankruptcy of the auto companies. The health care bill includes a special tax on health care plans that provide better coverage (disparaged as “Cadillac” plans), explicitly intended to encourage companies to eliminate them.

The American people—or at least all those who can’t afford to pay for the best coverage—will be left to the mercy of private insurance companies. The entire content of the health care “reform” bill is to encourage this process. It is not a significant reform, but part of a giant step backwards in health care. Again, it is telling that in the same decision, Chief Justice Roberts both upholds Obama’s law and calls into question the constitutional basis of much of the New Deal—the expansive reading of the Commerce Clause.

The *Times*—and the wealthy liberal milieu for which it speaks—is entirely in favor of this attack on the working class. This, combined with their increasingly desperate efforts to maintain the political authority of the Democratic Party, accounts for the nauseating mendacity of its coverage.



To contact the WSWWS and the Socialist Equality Party visit:

wsws.org/contact