

CONDI RICE'S SO-CALLED BANNER WEEK FOR FEMINISM



On Monday, Condi Rice became one of two women to become the first female members of Augusta National Golf Club.

Now, I'm with many who had other honors in mind for Condi in her post-Bush career. But I do recognize she's a good enough athlete that she might one day kick the ass of the misogynists at Augusta who don't like girls, even if they did let Condi into their exclusive club. In my experience that's one of the quickest ways to educate men about their impotence.

And today, we learn that Dr. Rice will have the honor of putting lipstick on the pig that is the GOP's rabidly anti-woman Vice Presidential candidate, Paul Ryan. Presumably, having one of their most respected women introduce Ryan will draw attention away from the fact that Ryan shares Todd Akin's beliefs that even women who have been raped shouldn't be permitted to choose not to bear the child. Indeed, in spite of the GOP's efforts to drive Akin from his race against Claire McCaskill to downplay his disdain for women, the party nevertheless adopted the Ryan-Akin no rape exception policy as part of their platform.

Yet with an Augusta ground-breaker like Condi introducing Ryan, I'm sure we'll all forget how systematically the GOP has fought women's equality and autonomy in both personal and professional venues.

What a banner week for feminism Condi has enjoyed!

AFTER STEARNS OUSTED BY YOHO, GAILLOT HAS OPPORTUNITY FOR DEMOCRATIC PICK-UP IN FL3

The biggest national story emanating from the August 14 primaries held in several states was the upset by Tea Party political novice Ted Yoho of Cliff Stearns, a twelve term Republican incumbent. Florida Congressional districts were realigned this year and Cliff Stearns chose to move into Clay County in District 3 after he learned he would face another Republican incumbent if he remained at his long-standing Marion County address. Stearns' move into Clay County was not smooth, as he became embroiled in a scandal in which he was accused of trying to buy off another candidate there. Despite the fact that Stearns had placed himself at the heart of Republican attacks on Barack Obama and liberal causes by staging "hearings" into Solyndra and government funding of Planned Parenthood, he clearly was not seen as conservative enough by the small band of die-hard Tea Partiers in his new district.

Yoho's ousting of Stearns, however, especially when it is coupled with other national trends, does not mean that he will coast to a win in November. First, it should be noted that the new district is dramatically different from the one which Stearns won repeatedly. While Stearns enjoyed large Republican registration advantages during his career, the new District 3 in Florida is almost exactly 50-50 when it comes to Republicans and Democrats. Figures at the close of registration just prior to the primary (pdf) show there were 175,138 Republicans and 176,788 Democrats in the district. There were also

66,082 voters registered with no political affiliation and when all registered voters were counted, the district came to 431,601 voters.

For his surprising victory, Yoho received a total of only 22,273 votes. That was only 34.4% of the Republican votes cast. Yes, because Florida's primaries were structured this year to not have runoffs, Yoho won even though 65.6% of Republicans who voted cast votes against him instead of for him. That also means that only 12.7% of the district's registered Republicans (and only 5.2% of its registered voters) voted for Yoho. It seems possible from at least some of the coverage of this race to believe that the Tea Party Republicans were the most engaged during the primary. If the Tea Party was more engaged than other factions of the Republican party for the primary, then Yoho faces the twin challenges of bringing the other 65% of his party into his favor and stimulating Republican turnout in a district which is evenly split between the major parties.

Larger national trends are likely to have a huge impact on that second question of turnout. When even Dana Milbank is beginning to believe that Republicans' outrageous positions and actions might provoke divine intervention (but Milbank completely missed that Isaac has been predicted to hit Gitmo on the way to the Republican convention in Tampa), the nation seems to be teetering on the edge of realizing just how crazed extreme Republican positions are. Especially important here is the continued candidacy of Todd Akin, who could force national attention onto the depravity of banning abortions even in the case of rape or incest. Also to be factored in is that Yoho now has the added burden of a Sarah Palin endorsement.

Yoho fits perfectly within the crazed realm of Tea Party Republican extremists. On his website he rails against socialism, endorses Ryan's Medicare plan, promotes his anti-abortion position, advocates "Drill, Baby, Drill" even though tourism in the Panhandle has barely

recovered from the BP spill and even throws his support to the Fair Tax initiative.

Democratic challenger J.R. Gaillot, while facing a very large uphill battle on name recognition after Yoho's victory garnered national attention, seems poised to take advantage of some of these factors which could weigh down Republicans in November. His positions are far from extreme: he is pro-choice, favors strengthening Social Security and Medicare and favors reform of Wall Street. He also is a strong advocate for equal opportunities for women and the Lilly Ledbetter Act. Despite these entirely reasonable positions, Gaillot chose to define himself as a "Blue Dog/ Old School Democrat" on Twitter (Gaillot followed me this morning and re-tweeted some of my tweets from election night, and that served to remind me that I had planned to write this post last week). While that won't endear him to me and perhaps many of my 58,619 fellow Democrats here in the more liberal Alachua County which is home to the University of Florida, it may serve him well with the rest of the more rural Democrats and voters with no party affiliation in the rest of the district.

On the surface, Gaillot also seems more suited to a Congressional position, as he is the son of a life-long diplomat and speaks several languages. That seems to have prepared him for Washington a bit better than Yoho's previous profession that required him to wear gloves that go to the shoulder, although it wouldn't surprise me for Yoho to follow his "pigs at the trough" ad with one where he uses those gloves to "clean up" Washington.

GOOD THING THE DEMOCRATS FORCED THAT VOTE ON THE RYAN PLAN

Most of what I have to say about Mitt Romney's pick of Paul Ryan I said on Virtually Speaking Sunday. I think the Ryan pick will hurt Mitt, and I think it opens up an opportunity for progressives to even box Obama in.

But I am enjoying the response from Republicans, who almost immediately started bad-mouthing the pick. First there was the BuzzFeed story—less than 48 hours after the pick!—describing how the political pros in Mitt's staff opposed the pick. And now Politico describes the opinions of some three dozen Republican operatives, all of whom except Mary Matalin are queasy about the choice. (The Hill has a similar story.)

In more than three dozen interviews with Republican strategists and campaign operatives — old hands and rising next-generation conservatives alike — the most common reactions to Ryan ranged from gnawing apprehension to hair-on-fire anger that Romney has practically ceded the election.

It is not that the public professions of excitement about the Ryan selection are totally insincere. It is that many of the most optimistic Republican operatives will privately acknowledge that their views are being shaped more by fingers-crossed hope than by a hard-headed appraisal of what's most likely to happen.

And the more pessimistic strategists don't even feign good cheer: They think the Ryan pick is a disaster for the GOP. Many of these people don't care that much about Romney — they always felt he

faced an improbable path to victory – but are worried that Ryan’s vocal views about overhauling Medicare will be a millstone for other GOP candidates in critical House and Senate races.

One big reason the operatives don’t like this choice is it makes their job—getting down-ticket Republicans elected—harder.

And that’s just what it does to the Romney-Ryan ticket. Forget how it plays in close House and Senate races.

“Very not helpful down ballot – very,” said one top Republican consultant.

“This is the day the music died,” one Republican operative involved in 2012 races said after the rollout. The operative said that every House candidate now is racing to get ahead of this issue.

And what Politico doesn’t dwell on—but what Crooks & Liars noted the other day—is that it’s already too late for most of the Republicans running for reelection to separate themselves from Ryan’s signature policy. Because they already voted for it.

Even as Mitt Romney was introducing Wisconsin Rep. Paul Ryan as his running mate, his campaign was preparing a defense of the House Budget Chairman’s draconian Medicare proposals. With good reason. After all, in April 2011 the nonpartisan Congressional Budget Office forecast that Ryan’s scheme to convert today’s guaranteed Medicare insurance program into an underfunded voucher system would dramatically shift the health care costs onto America’s seniors. And in February 2010, Ryan acknowledged his privatization plan for millions of future elderly constituted rationing.

But it's not just Team Romney that should be concerned about being caught red-handed with the proverbial gun pointed at the wildly popular program. Last year, 235 House Republicans and 40 GOP Senators—98 percent of all Republicans in Congress—voted for Paul Ryan's budget and its blueprint to rationing Medicare.

What's particularly remarkable about the Politico piece is that, in spite of widely expressed admiration for Ryan, just about all the anonymous sources admit that people hate his plan. The plan their bosses have already voted for.

I don't think any of the geniuses in DC—whether Republican or Democratic—planned for this. I don't think they intended to turn Mitt Romney into the poster child for the elites who have been looting our country. I don't think Mitt realized that by picking Ryan, he would make the problem worse, not better.

But this election has now crystalized into a referendum on the austerity, oligarchy, and looting the Republicans (and more recently, the Democrats too) have been gradually introducing into our country.

Obama may still screw up the election. The economy may recrash, the drought may bring a price spike that makes people desperate enough to vote for Mitt, or there may be an October surprise.

And I'm sure Obama didn't want to be running this election, pointing out how unpopular and disastrous are Ryan's policies—policies which are not that different from some of his own.

But that seems to be where we're heading. A referendum, from the top of the ticket on down, on the unpopular elitist policies that both parties in DC have been pushing for the last decade or so.

IN MI THIS YEAR IT'S ALL ABOUT THE REFERENDA

MI's Supreme Court just ruled that, in spite of the purportedly improper font size used on petitions, the referendum to overturn MI's Emergency Manager law will be on November's ballot. This may be a tough vote: obviously if we can get rid of the law we can begin to talk about how MI can craft a recovery as a whole, rather than leaving behind our cities that have been devastated by globalization and segregation.

But I hope two of the other referenda on the ballot will help to push the EM repeal law over the top.

First, there's Protect Working Families (AKA Protect Our Jobs). If passed, it will make collective bargaining a constitutional right in MI. It's akin to OH's Prop 2, in that it will rally labor, in an even more heavily unionized state. I canvassed for this referendum over the weekend in a modest middle class neighborhood, and it seemed there was a lot of support.

Then there's Michigan Energy, Michigan Jobs. That will mandate 25% of MI's energy come from renewable sources by 2025. Grist's David Roberts described it as the country's most important clean energy vote this year, partly because of the way that clean energy could fundamentally alter our economic picture in the state.

Hell, according to the National Renewable Energy Laboratory, Michigan could power itself with onshore wind alone.

The more Michigan develops its local renewable resources, the more electricity generation becomes a boon, an economic growth engine, rather than

merely a cost. Energy money stays in the state and circulates in local communities (Michigan already has a substantial wind and solar supply chain [PDF]) rather than being transferred to out-of-state fossil-fuel companies. Michigan wins: more economic activity, more jobs, more pollution-free energy, more pride.

Those three referenda could dramatically make MI's economy more fair and sustainable. Which means there will be unbelievable amounts of money spent to defeat them.

And then there's the referendum that DDay called "Son of Prop 13," which would require a supermajority to raise taxes. It would effectively lock in the reapportionment of taxes that Rick Snyder put into place, and take an already dysfunctional legislature and add another barrier to fixing the state's woes.

Put that against the background of the Presidential election. One rule of MI politics is Democrats succeed when the state's African American population turns out. Rick Snyder vetoed the kind of voter suppression measures that FL and PA have passed, though there were already some prohibitive measures on the ballot, particularly effecting students. Which means the African Americans who try to vote should be able to. Then there's Obama's popularity, which for obvious reasons is probably greater than in any other rust belt state.

So we should have a fairly democratic electorate come out in November. Let's hope that makes the difference on these referenda.

MARK BREWER AND STEVE PESTKA: TAKING THE “DEMOCRATIC” OUT OF THE DEMOCRATIC PARTY

As MLive reports, the state Chair of MI's Democratic Party, Mark Brewer, has asked the Democratic primary candidates in my congressional district to take the democracy out of the primary.

He doesn't call it that, mind you. His DoubleSpeak for asking Steve Pestka and Trevor Thomas not to talk about each other's record is “Clean and Fair Campaign Agreement.”

I write today to ask you both to put [commitments to focus on Justin Amash] in writing by signing and abiding by the enclosed “Clean and Fair Democratic Primary Campaign Agreement.”

One of the clauses in the proposed agreement is:

To avoid attacks on each other's records and positions by any means, **including the media**, campaign literature, advertisements, phone calls, mailings, e-mail and speaking engagements. [my emphasis]

Apparently, the guy running MI's Democratic Party thinks it's “fair” to voters to gag all discussion of candidates' past records. And Steve Pestka, who said he will sign this gag order, agrees!

A couple of notes about this proposed gag order.

This is yet another attempt (at least the fifth I have heard or witnessed over the course of this primary) by leaders in the Democratic

Party—the same one running against the GOP’s war on women—to silence all discussion of Democrats’ own attacks on women’s autonomy. As far as I’m aware, the only part of Pestka’s record that Thomas has addressed (thus far) was his anti-choice votes while serving in the MI House (indeed, MLive suggests that’s what this is about, as well). Pestka’s campaign, meanwhile, just wanders around saying Thomas has no record (ignoring, of course, Thomas’ role in getting DADT repealed; apparently that doesn’t count).

So this is not about gagging discussion on a policy that Justin Amash would use to bash the Democrat, cause he’s rabidly anti-choice too. Rather, it is about preventing voters from learning what Steve Pestka did the last time voters entrusted him to represent their interests. Mark Brewer’s idea of a “fair” primary is to prevent women from being reminded that Pestka’s record includes a history of legislating against women’s autonomy.

Apparently, we girls aren’t allowed to hold him accountable for voting against our interests.

Furthermore, Brewer built this gag order to be asymmetrical. He didn’t ask Pestka and Thomas to avoid talking about their **own** records—meaning Pestka would be gagged from mentioning he served in the House and Thomas would be gagged from talking about his role in a key civil rights victory. Rather, this gag order would allow Pestka to continue sending out lit pointing to his time in the State House as one thing that qualifies him to serve in Congress, without allowing Thomas to point out some of the terrible votes he made while there.

If you’re going to gag discussion about past records, Chairman Brewer, you’ve got to gag discussion on both sides!

There’s one more really disgusting aspect to this gag order. Brewer attempts to gag not just the campaign itself, but both his reference to “the media” in the passage above and in the scope of those the candidates would have to gag

if they agreed to this—"campaign teams, including staff, surrogates, advisors, consultants, vendors and volunteers"—people far beyond Thomas himself. I'm not formally part of Thomas' campaign at all (I have donated to his campaign, though), but I am "the media." I also happen to be a 3rd CD voter who finds the paternalistic way the Democrats have pushed Pestka—"shut up girls! don't talk about his anti-choice record!"—to be profoundly anti-woman. Is Chairman Brewer really proposing that Thomas be fined every time I speak, as a 3rd CD voter and registered Democrat, for the importance of a candidate who fully supports women's rights?

That's what the Democratic Party has come to?

Who knows. Maybe there's a bright side to this. Pestka's campaign loves to attack Thomas—who grew up, went to college, and worked in the area, then returned home after succeeding in DC—as a "carpetbagger." Since this gag order also imposes a fine for personal attacks, I assume Pestka's campaign will start doling out \$1000 to a charity of Thomas' choice every time they continue to make such stupid attacks.

Maybe Thomas should name Planned Parenthood as the charity Pestka will have to donate to?

ARIZONA HAS A NEW DEMOCRATIC SENATE CANDIDATE!



Well, okay, Richard Carmona has been formally announced for the race since early November of 2011, but with yesterday's dropout by the only other major Democratic contender,

former state Democratic Party Chair Don Bivens, the field is effectively cleared for Carmona.

Bivens was gracious and indicated clearly he is getting out for party unity:

"The continuing head-to-head competition of our Democratic primary is draining resources that we will need as a Party to win the U.S. Senate race in November," he wrote in a statement. "While I am confident we would win this primary, the cost and impact on the Party I've spent my life fighting for could diminish our chance to achieve the ultimate goal: winning in November."

Bivens had a stellar third quarter in fundraising, but momentum quickly shifted to former Surgeon General Richard Carmona when he entered the race in November. Carmona had the backing of much of the national Democratic establishment.

In a joint statement with Democratic Senatorial Campaign Committee Chairwoman Patty Murray (Wash.), Senate Majority Leader Harry Reid (D-Nev.) wrote that he was "heartened that Don has decided to focus his time and energy" on President Barack Obama's re-election and on Carmona's campaign.

This is actually fairly exciting news here in the desert, as the party, both in state and nationally, can coalesce around Carmona and focus on the necessary effort to insure very conservative Republican Congressman Jeff Flake, the certain nominee for the GOP, does not win. The race is for the seat of the retiring Jon Kyl and, for the first time since Dennis DeConcini left, the Dems have a serious chance of gaining a Senator in Arizona. A goal not only critical to us in Arizona, but in the national efforts to retain the all important Majority status in the Senate.

Why is Carmona, the man and candidate, so exciting? Well, because he has a legitimate shot at winning, that's why. And who is Richard Carmona? Here is his campaign biography:

Born to a poor Hispanic family in New York City, Dr. Richard Carmona experienced homelessness, hunger and bleak prospects for a future education and economic opportunity. The child of parents who emigrated to the United States and struggled with alcoholism and substance abuse, Rich learned tough early lessons about economic disparities and social injustice – an experience he has never forgotten, and one that has given him an understanding of how culture, health, education and economic status shape our country.

Like his siblings and many of his friends, Rich dropped out of high school. With few skills and little education, he enlisted in the Army and went to Vietnam. Military service gave him discipline and a drive to succeed that he still carries today. In order to apply for Special Forces and become a combat medic, he earned his high school equivalency degree. Rich left the Army a combat-decorated veteran, with two Bronze Stars, two Purple Hearts, a combat medical badge and numerous other

decorations to mark his service.

When he returned home from Vietnam, Rich became the first member of his family to earn a college degree. Through open enrollment reserved for returning veterans, he attended Bronx Community College and earned an Associate of Arts degree. Later he went to the University of California, San Francisco, where he earned a bachelors of science degree. Two years later, Rich completed his medical degree – receiving the prestigious gold-headed cane as the school's top graduate.

Trained in general and vascular surgery, Dr. Carmona also completed a National Institutes of Health-sponsored fellowship in trauma, burns, and critical care. A Fellow of the American College of Surgeons, Dr. Carmona was recruited jointly by the Tucson Medical Center and the University of Arizona to start and direct Southern Arizona's first regional trauma care system. He, his wife Diana and their four children, relocated to Tucson.

Dr. Carmona would later become chairman of the State of Arizona Southern Regional Emergency Medical System, a professor of surgery, public health and family and community medicine at the University of Arizona, and the Pima County Sheriff's Department surgeon.

While continuing his medical career, Rich's call to service lead him to the Pima County Sheriff's Department in which he has served for more than 25 years as a deputy sheriff, detective, department surgeon and SWAT Team Leader. In 1992, he rappelled from a helicopter to rescue a paramedic stranded on a mountainside when their medevac helicopter crashed during a snow storm, inspiring a made-for-TV movie. In the

course of his service, Rich received the National Top Cop Award and was named the National SWAT Officer of the Year.

In 2002, Carmona was nominated by the president and unanimously confirmed by the United States Senate to become the 17th Surgeon General of the United States. As Surgeon General, Carmona focused on prevention, health disparities and emergency preparedness to protect the nation against epidemics and bio-terrorism. He also issued a groundbreaking report on the dangers of second-hand smoke.

While very successful as Surgeon General, he unfortunately also experienced the divisive politics that continue to plague Washington today – where the desire to score political points has become more important than solving problems, creating jobs or providing for those in need. That experience guides his current mission to become Arizona's next senator and change how Washington works.

In 2007, Dr. Carmona testified before Congress that political appointees had put partisan politics ahead of science – especially when it came to the public's health – in hopes that shining a light on how the administration operated could bring change. He testified: "The job of surgeon general is to be the doctor of the nation, not the doctor of a political party."

Now THAT, folks, is a history and experience set to kill for in a political candidate for major office. Handsome fellow, and extremely charismatic and personable, too.

Now, I will say this much, Carmona is not, and will not be, a true liberal progressive overall, that is simply not his makeup. I do not yet know

Richard personally, but have friends that have both known him since he first came to Arizona decades ago, as well as friends that studied medicine under him, and all advise he is a real deal independent thinker who is overall Democratic in base ideology, but pretty moderate.

Now, the good news: Carmona is very good on the critical health issues currently roiling the nation's politics, including on women's issues that are so under fire recently:

Throughout my time as U.S. Surgeon General, I remained steadfast in my belief that every woman should have access to comprehensive health care, including retaining access to reproductive health care options and FDA-approved prescription contraceptives.

As a medical doctor, I know that a woman's access and choice of reproductive health care options is an intensely personal decision left best decided by a woman and her physician. I also believe it is important to reduce the number of unwanted pregnancies in the United States through supporting medically-accurate, comprehensive sex education for our kids, taking steps to prevent teen pregnancy and providing access to pre-natal care for all women.

Carmona is dogged in his desire to protect Social Security and Medicare, as well as providing appropriate care, that has to date been shockingly lacking, for veterans. Carmona is also strong on the need for immigration reform (trust me, this is absolutely critical here on the border).

A fuller statement on Richard's priorities can be found [here](#). All in all, it is a great policy set.

One of the things not listed in Carmona's

priorities, and that I am most interested in, is his in depth stance on environmental issues. How we steward our national resources and deal with global warming will be of critical importance. This is geometrically more true in a state of open land, rich natural resources and fragile Sonoran riparian habitats like we have in Arizona. I will be seeking clarification in this regard from Mr. Carmona immediately, and will report appropriately. In fact, I am going to make sure he gets this blog post and a formal request for response.

Here is why this race is SOOOOOO important: Once elected to the Senate from Arizona, people tend to stay there forever. Jeff Flake, the certain GOP nominee, is personally a very nice guy; he is, however, a catastrophe from a policy standpoint. If Jeff Flake is allowed to win this seat, he will never leave unless he gets placed on a national ticket that wins the White House. The tide is turning Blue in Arizona, and we simply cannot tolerate another entrenched right wing extremist.

Richard Carmona has the goods to beat Flake and give both Arizona and national Democrats a strong and, compared to the lobbied up norm for national politicians, genuine voice. As Marcy is doing with Trevor Thomas in Michigan, I will be writing about Carmona and our local race here in Arizona from time to time.

I hope you will join me in supporting Richard Carmona for US Senator for Arizona. Here is where you can get involved, here is where you can donate!

OBAMACARE WEEK IS A GREAT TIME TO

SUPPORT PRO-CHOICE TREVOR THOMAS

Last week, for its 2-year anniversary, Democrats rightly celebrated that ObamaCare has made preventative health care—things like mammograms—accessible for free to 45 million women.

And this week, as the ObamaCare hearing represents the biggest event at SCOTUS since *Bush v. Gore*, Democrats continue to celebrate ObamaCare (which is a good thing, politically; Obama should have done this a year ago).

But no one is talking about the biggest error the Democrats made aside from selling out the public option: letting Bart Stupak, an anti-choice MI Democrat, roll back access to abortion for women in every Congressional District in America. Not only have Democrats forgotten that their own tolerance for anti-women stances hurt Obama's signature issue (and hurt their chances in 2010), but they're back at it—recruiting anti-choice self-funders like Steve Pestka rather than backing pro-choice candidates like Trevor Thomas.

It's as if the Democrats have put a price tag on women's health, one they're not willing to invest to pay.

There are a lot of reasons why Trevor Thomas is the better choice to take on Justin Amash in MI's 3rd CD: his working class background, his push to address MI's high unemployment rate for Veterans, his call to do something about the looming student loan bubble.

But this week, of all weeks, it's important to make clear that it is not acceptable to do what the Democrats have done, decide that fighting for women's issues is simply too much work and too much money.

Support Trevor Thomas. Support Trevor Thomas on ActBlue.

ACA AT SCOTUS: SOME THOUGHTS ON THE MANDATE



As you likely know by now, we stand on the cusp of historic oral arguments this week in the Supreme Court on the Patient Protection and Affordable Care Act (ACA),

otherwise popularly known as “Obamacare”. The arguments will occur over three days, for a total of six hours, Monday through Wednesday. Yes, they really are that historic, as Lyle Denniston explains in SCOTUSBlog. The schedule is as follows: Monday: 90 minutes on whether the Anti Injunction Act (AIJA) prevents consideration of a challenge to the individual mandate until it takes effect in 2014; Tuesday: Two hours on the Constitutionality of the individual mandate; and Wednesday: 90 minutes on severability of the main law from the mandate and 60 minutes on state sovereignty concerns of Medicaid reform.

There are two areas of particular interest for me and which really are the meat on the bone of the overall consideration. The first is Monday’s technical argument on the AIJA, which I actually think may be much more in play than most commentators believe, because the Supremes may want to punt the politically sticky part of the case down the road until after the 2012 elections, and the AIJA argument is a ready made vehicle to do just that. Judge Brett Kavanaugh’s dissent in *Seven Sky v. Holder* explains how that would go should the Supreme beings decide to

punt. This is by no means likely, but do not be shocked if it occurs; can kicking down the road is certainly not unknown at SCOTUS on politically sensitive cases.

By far, however, the biggest, and most contentious, kahuna of the healthcare debate is the individual mandate, and that is where I want to focus. The two sides, pro (predominantly liberal left) and con (predominantly conservative right), have been selling their respective wares since before the law was passed and signed by the President. As we truly head into the arguments, however, the pro left have crystallized around a matched pair of articles by Dahlia Lithwick and Linda Greenhouse, and the con right around response pieces by James Taranto and Ed Whelan.

Now this hardly seems like a fair fight, as Taranto has no degree, nor legal training, whatsoever; that said he and Whelan actually lay out the contra to Dahlia and Linda pretty well. Each side effectively accuses the other of being vapid and hollow in argument construct. I will leave aside any vapid discussion because I think both sides genuinely believe in their positions; as to the hollowness, though, I think both sides are pretty much guilty. Which is understandable, there is simply not a lot of law directly on point with such a sweeping political question as presented by the mandate.

"Unprecedented" may be overused in this discussion, but it is not necessarily wrong (no, sorry, *Raich v. Gonzales* is not that close; it just isn't).

In short, I think both sides are guilty of puffery as to the quality of *legal* support for their respective arguments, and I believe both are guilty of trying to pass off effective political posturing as solid legal argument. Certainty is just not there for either side. This is a real controversy, and the Supreme Court has proved it by allotting the, well, almost "unprecedented" amount of time it has to oral argument.

All of the above said, I join my friend Dahlia (and, more nebulously, Linda) in predicting the mandate will be considered (i.e. the AIJA argument discarded) on its merits, and the mandate will survive by either a solid 6-3 or 7-2 vote. There is one caveat to that, however. I have long maintained John Roberts will never be the fifth, and swing, vote to uphold the mandate/Obamacare by a narrow split of 5-4. If it comes down to that, Tony Kennedy would have had to have thrown in with the conservatives, and Roberts will never be the swing, nor would Alito or Scalia. But, if Kennedy goes with the liberal bloc, so that 5-4 is already there, Roberts will sign on to make it 6-3 and there might even be one more that signs up to make it 7-2. So, Obamacare either wins by 6-3 or 7-2, or loses by 5-4, and I think the former. You heard it here.

Now, I want to explain why, at least in my eyes, the mandate is no slam dunk and why I think even my friends on the liberal side are perhaps a little rah rahed and puffed on how awesomely clear cut the mandate is. In that regard, a couple of examples of just how important the mandate consideration is, because of how largely writ it can be extrapolated out, should be considered.

The first analogy comes courtesy of David Bernstein at Volokh:

But let's say the Federal government decided to pass legislation, modeled on longstanding state laws, requiring all residents of the United States to attend school until age 18 or face [some penalty—a fine, or being drafted into “national service” or whatever]. A resident of a state where schooling is only mandatory until age 16 sues, claiming that this is beyond Congress's enumerated powers.

The government claims that it has the authority under its Commerce power to require school attendance. After all,

not only is education is a huge percentage of the American economy, the federal government already regulates the education market to a substantial degree and spends tens of billions of dollars annually for education, money that will to some extent be wasted if children don't continue their education at least through high school. Thus, it's both necessary and proper that the government impose an education mandate to ensure that it's education policies will be successful.

To the argument that a sixteen year old dropout isn't engaged in economic activity, the government argues that staying out of school is itself an economic activity, because, among other things, it reduces the amount of federal and state aid to one's school, makes one less marketable in the employment market, reallocates resources that would otherwise be spend on the dropout's education, and makes it more likely that one will need to spend money on education in the future. Moreover, no one is really "out" of the education market, because everyone is learning things all the time, whether from t.v., one's friends, Facebook, or formal schooling. Finally, by dropping out of school, a sixteen year old is raising the expected costs to the government and society of future crime, welfare payments, and the like.

Anyone think the government should win?

Actually David, yeah I wouldn't have a real problem with that. As a sage friend related to me this morning, there is a direct correlation between a nation's ability to compete in a world market and the level of education provided to it's citizens. Citizens with less, or poorer, education harm the entire nation – it's welfare, it's defense, its very liberties and it's

ability to defend itself against threats and enemies, foreign and domestic. I think that is exactly right; if you accept the individual mandate is constitutionally agreeable, it would be hard to see how you could disagree with an "education mandate".

I would hazard a guess, contrary to David Bernstein's point, most liberals, and maybe even many from the right, might have no problem with mandatory education as a corollary act to the healthcare mandate under the Commerce/Necessary & Proper Clauses (though they may, of course, want vouchers and church school subsidization).

Problem is, the analogies can get harder. Much harder. Let's try this one of my own construct:

Guns and armament are necessary for the national defense, as is a strong and robust domestic weapons industry. It is important to not only encourage adequate arming of the citizenry for protection from terrorists and foreign agents, but to also encourage the manufacturing capability here in the homeland.

Ergo, every citizen, regardless of their age, shall from here forward be mandated to buy a gun (parents will be in charge of, and responsible for, the guns on behalf of the minors until they reach the age of majority). You will, of course, be able to opt out and pay a \$750.00 per person, per year, tax penalty for not complying with the mandatory gun purchase and ownership.

You okay with this one too? If so, is there any mandatory purchase legislation you would not be okay with? What would be the threshold discrimination for a compelled commerce purchase law that would *not* be appropriate to you be then?

The question of whether one believes there is any limit whatsoever on the commerce power of Congress, and whether that is a good or bad

thing, exists irrespective of SCOTUS, at least until they rule on this ACA extravaganza. This stuff matters. A lot. I personally find the analogies extremely useful to explore just how committed people are to the political blarney that has been casually cast about as legal argument on this issue – by both sides.

Are the liberal proponents of the mandate, who bellow “it is absurd to even question the issue, obviously the mandate is within the Commerce power!” really willing to follow the import and implication of their arguments out to their conclusion?

Are the conservative opponents of the mandate, who screech “this is unprecedented, and of course Article III courts have the innate power and authority to ban a facially valid law of Congress under the Commerce/Necessary and Proper Clauses!” really willing to accept that authority, control and micromanagement of Article I Congressional will by the Article III courts? Because that is not exactly what they normally say.

There is actually a bit of a paradox in both side’s positions vis a vis their normal views; liberals usually accept more control and regulation by courts on Congressional action as a check and balance, conservatives usually vehemently argue courts have no such proper role.

This is about far more than Obama’s questionably cobbled together ACA law; the law is inane in how it soaks Americans to benefit craven insurance companies. Either way, sooner or later, healthcare as constructed and/or mandated by the ACA will die a painful death, but will continue to decimate American families for years, irrespective of the ruling by the Supreme Court on its nominal constitutionality. At some point, single payer, such as “Medicare For All” is inevitable.

However, the pervasive effects of the Commerce/Necessary & Proper Clause determination

on the individual mandate, caused by the nightmarishly cobbled together Obamacare, will shape the direction of the Supreme Court in relation to commerce, business interests and, indeed, potentially American life across the board, for decades, if not lifetimes, to come.

That is what is at stake this week. Yes, it is *that* big. No, it is not *that* easy or clear cut. I do not know how it all sorts out for sure, but I do I do think, unlike the vast majority of the political commentators opining in the ether, the Supreme Court understands the consequences for the long run and the gravity of what they are considering. That said, it is still a very political decision for the Supreme beings, and how they calculate that, vis a vis history, is anybody's guess.

One thing IS certain, when the dust has settled, one side will say the Supremes are beautiful minds, and the other will say they are craven activist tyrants. That is life in the modern Article III existence. Game on!

GRANHOLM, CHERRY ENDORSE TREVOR THOMAS

Trevor Thomas got some very nice props last night in his effort to win the Democratic nomination to beat Justin Amash in MI's 3rd Congressional District: the endorsement of Jennifer Granholm and her former Lieutenant Governor, John Cherry. From the release:

"From day one Trevor has been a fighter for fairness and opportunity," said former Governor Jennifer M. Granholm. "From the newsroom to the halls of Congress, Trevor has the experience and passion to get results on the issues

critical to Michigan families. This is a campaign of inclusion that will stand up and represent all the voices of West Michigan and I am proud to support and be a part of it.”

“Trevor parent’s worked a combined 60 years on the lines of General Motors so he could have the chance to go to college, and now he is fighting for us all in his bid for Congress,” said former Lt. Gov. John D. Cherry Jr. “Trevor has worked to pass major federal legislation in support of our troops and he put party aside to get the job done. This is the fresh and progressive leadership we need today.”

Governor Granholm seems to get what this race is about.

Steve Pestka, Thomas’ primary opponent, will announce today. Given the DOJ events later in the day, I’m not able to rearrange my schedule to attend that announcement. But it looks like things are heating up (finally) in the 3rd.

MICHIGAN DEMS SHOULD BILL MITT \$5 MILLION

The MI GOP, which believed it could guarantee a win for Mitt Romney but produced only a delegate tie, voted to ignore the election results and give Romney the win anyway.

Michigan’s two at-large delegates to the Republican National convention will be awarded to Michigan native Mitt Romney, following a vote last night by the state party’s credentials’ committee.

The vote came despite the party's rules that the two at-large delegates are supposed to be awarded on a proportional basis based on the statewide popular vote. Romney won the statewide vote by a 41% to 38% margin over former Pennsylvania Sen. Rick Santorum.

[snip]

As a result, Romney gets 16 delegates and Santorum 14.

The move comes the day after a Romney supporter said that Rick Santorum should give back the delegates he won because Democrats crossed over to support him.

"[Santorum] cheated by asking people who would never vote for him for president to vote for him in the Republican primary," Rep. Mike Turner (R-Ohio) said on a call with reporters. "I believe that he should agree to give back a percentage of the delegates that he won in the Republican primary with Democrat votes that would never support him for president."

I need to figure out what the precise results for CDs were, but I would bet that the 2 delegate swing to Romney would effectively do precisely what Turner demanded: given Romney as many delegates as he would have gotten if Dems hadn't crossed over.

So I think the MDP should bill Mitt \$5 million. After all, all taxpayers in the state paid for Tuesday's primary (I believe, but need to double check, that the cost was \$10 million). The GOP even invited us Democrats to vote in their primary. So our votes should count. (FWIW, I couldn't bring myself to vote for Santorum; I voted for Fred Karger.)

And yet, the GOP have just held a private vote to invalidate our votes.

But Mitt has plenty of personal money to pay back the state for half the primary cost. And at \$2.5 million per extra delegate, it's not all that unreasonable a cost given what Mitt has paid elsewhere!