

NATE'S "COMMON SENSE" ON OBAMACARE

Nate Silver has a post purporting to show that it is "common sense" that SCOTUS overturning ObamaCare (Nate calls it the "health care bill," which it is assuredly not) would not be good for Obama.

He argues his point by pointing to the very same data I did when arguing there are things Obama could do to make a SCOTUS loss work to his advantage. Nate notes that Obama doesn't need ObamaCare one way or another to enthrone his base. Nate acknowledges that swing voters—the people who will decide the November election—don't like ObamaCare. And then he notes that these same swing voters in general have a good opinion of SCOTUS. Nate summarizes the "common sense" he derives from this data this way:

However, the argument that the bill being struck down would actually help Mr. Obama seems to have little grounding in the evidence – nor, frankly, in common sense. Among the voters that are most critical to Mr. Obama's re-election prospects, the Supreme Court is more popular than the health care bill. If the justices declare one of the president's signature accomplishments to be unconstitutional, it would not be a boon to him.

The people who will decide the election don't like ObamaCare and so—Nate's common sense says—if law they don't like goes away (in part or whole?), they will be less likely to vote for the guy who brought them that law they don't like that has gone away. "Common sense"!

Let's unpack the things Nate doesn't talk about, in addition to his calling a health insurance law a health care bill.

First, he does what ObamaCare boosters tend to do in these discussions, not distinguish between a scenario where just the mandate is thrown out, and one in which the entire law is thrown out (due, largely, to the Administration's own arguments about severability). Each scenario, it seems, would have different results. If SCOTUS threw out that part of the law people disliked most, it might make everyone—except the insurance companies and those arguing that a mandate is the only way to make this work—happy, particularly if the Administration promised to find a solution that would make the whole thing work (they won't). Whereas if SCOTUS threw out the whole thing, it would lead people to become aware of the parts of the law people really do like, such as coverage for those with pre-existing conditions and kids under 26, and therefore develop a new appreciation for the law SCOTUS shot down. I think there are potential upsides and downsides for Obama in both those scenarios, but they are two different scenarios, and any "common sense" ought to acknowledge that.

And then there's the other assumption: that if SCOTUS threw out ObamaCare Obama would be utterly passive; that reactions to the SCOTUS decision would be entirely unaffected by Obama's response because (presumably) there wouldn't be one.

We already know that Obama will respond because he's doing so already—by attacking the SCOTUS that, as Nate points out, is better liked by the people who will decide November's election than ObamaCare is (in response, the 5th Circuit has gotten an order of magnitude more petty, threatening to let the whole thing devolve into an intra-branch squabble no one will like). I have already suggested that's probably the least productive response; if that's going to be Obama's response, I agree, losing at SCOTUS will hurt him.

In any case, we know that if ObamaCare is shot down, Obama will respond. The question is

whether he will respond in a way that helps his electoral chances or hurts them.

How voters will respond to a SCOTUS defeat is partly contingent on Obama's actions. He can respond in a way that appeals to those swing voters—perhaps by offering alternatives that address the thing people like least about the law, the mandate—or he can respond in a way that exacerbates precisely the poll numbers Nate points to by doing what he is doing.

I'm not saying a SCOTUS defeat (of the mandate or the entire law) will help or hurt Obama. But I am saying that he can influence that response and—possibly—use a defeat to turn this thorn in his popularity around. I'm increasingly pessimistic he will do so, mind you, but he is not a passive actor in affecting the response.