On the nature of political waves

Michael Gerson

WASHINGTON — The Republican Party is ascendant, emboldened — and on the verge of debilitating mistakes.

There is little doubt about Republican ascendance. In June 2008, Democrats enjoyed a nearly 20-point lead in the generic congressional ballot; today they are behind. Approval for President Obama among independents has fallen below 40% for the first time in his presidency. Vice President Biden recently protested that he saw no "grand debacle" coming in November for Democrats, thereby giving a name to Democratic fears. A debacle seems precisely what's in store.

But the problem with political waves is that they generate misleading momentum and exaggerated ideological confidence. Parties tend to interpret shapeless public discontent as the endorsement of their fondest ambitions. Obama mistook his election as a mandate for the pent-up liberalism of his party. Some Republican activists are intent on a similar but worse mistake.

The Republican wave carries along a group that strikes a faux revolutionary pose. "Our Founding Fathers," says Nevada Republican Senate candidate Sharron Angle, "they put that Second Amendment in there for a good reason, and that was for the people to protect themselves against a tyrannical government. And in fact, Thomas Jefferson said it's good for a country to have a revolution every 20 years. I hope that's not where we're going, but you know, if this Congress keeps going the way it is, people are really looking toward those Second Amendment remedies."

Angle has managed to embrace the one Founding Father with a disturbing tolerance for the political violence of the French Revolution. "Rather than it should have failed," enthused Jefferson, "I would have seen half the earth desolated." Hardly a conservative model.

But mainstream conservatives have been strangely disoriented by tea party excess, unable to distinguish the injudicious from the outrageous. Some rose to Angle's defense or attacked her critics. Just to be clear: A Republican Senate candidate has identified the United States Congress with tyranny and contemplated the recourse to political violence. This is disqualifying for public office. It lacks, of course, the seriousness of genuine sedition. It is the conservative equivalent of the Che Guevara T-shirt — a fashion, a gesture, a toying with ideas the wearer only dimly comprehends. The rhetoric of "Second Amendment remedies" is a light-weight Lexington, a cut-rate Concord. It is so far from the moral weightiness of the Founders that it mocks their memory.

The Republican wave also carries along a group of libertarians such as Kentucky Senate candidate Rand Paul. Since expressing a preference for property rights above civil rights protections — revisiting the segregated lunch counter — Paul has minimized his contact with the media. The source of this caution is instructive. The fear is not that Paul will make gaffes or mistakes, but rather that he will further reveal his own political views. In America, the ideology of libertarianism is itself a scandal. It involves not only a retreat from Obamaism but a retreat from the most basic social commitments to the weak, elderly and disadvantaged, along with a withdrawal from American global commitments. Libertarianism has a rigorous ideological coldness at its core. Voters are alienated when that core is exposed. And Paul is now neck and neck with his Democratic opponent in a race a Republican should easily win.

In addition, the Republican wave carries along a group more interested in stigmatizing immigrants than winning their support. Some conservatives have found Arizona's anti-immigration law a cause worth fighting for — a law that is poorly written, ineffective, symbolically toxic and likely to be overturned.

The response of many responsible Republicans to these ideological trends is to stay quiet, make no sudden moves and hope they go away. But these are not merely excesses; they are arguments. Significant portions of the Republican coalition believe that it is a desirable strategy to talk of armed revolution, embrace libertarian purity and alienate Hispanic voters. With a major Republican victory in November, those who hold these views may well be elevated in profile and influence. And this could create durable, destructive perceptions of the Republican Party that take decades to change. A party that is intimidated and silent in the face of its extremes is eventually defined by them.

This is the challenge of a political wave. It requires leaders who will turn its energy into a responsible, governing agenda. So far — in Congress, among conservative leaders, among prospective presidential candidates — that leadership has been lacking.

And so the Republican Party rides a massive wave toward a rocky shore.

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A sign of what's to come

Ron Howrigon

RALEIGH — Wednesday a large North Carolina newspaper featured a front-page story about Blue Cross Blue Shield of North Carolina's new plan to reduce its administrative expenses by 20%, which would cut $200 million from its annual expenses. In today's economy, we have become so accustomed to hearing these kinds of corporate "cutting spending" announcements because we hear them practically every day. But if you read between the lines of this story, it is evident this article is about something much bigger than simply cutting costs. This article is revealing of the unintended consequences of health care reform legislation and the scary reality of what's to come further down the road.

Blue Cross Blue Shield of North Carolina is the largest insurance company in the state. In 2009, the insurance giant took in $5.2 billion in revenue (that's billion with a "b") and had net income of $107.3 million. Not only this, but Blue Cross Blue Shield has more than $1 billion in cash reserves. By its own estimates, Blue Cross Blue Shield should expect to attract the lion's share of almost 2 million people in North Carolina who will have health insurance after some of the major provisions of the new health care reform legislation take effect in 2014. So why would a successful insurance company like Blue Cross Blue Shield (a company that has large cash reserves, is highly profitable and is projected to grow significantly) want to reduce its expenses and become a smaller company? Because it must begin preparing for the worst case scenario — a collapse of the entire insurance industry once health care reform legislation officially takes effect in 2014.

Blue Cross Blue Shield is not thrilled about health care reform. In fact, like other insurance companies, it is scared to death. And rightfully so! As a result, Blue Cross Blue Shield execs have begun making adjustments to their business model to prepare for what they believe will be a tremendously difficult year in 2014. Blue Cross Blue Shield points to health care reform and a poor economy for its need to reduce costs. It also reveals that medical expenses will need to be reduced as well and that this will include some "tough negotiations." In case you were wondering, the term "tough negotiations" is referring to negotiating reductions in reimbursements with physicians and hospitals.

The most telling parts of the article were the comments regarding diversification and the potential destructive effects health care reform could have. Blue Cross Blue Shield CEO J. Bradley Wilson states his company is reviewing opportunities to expand into life insurance, worker's compensation coverage and payroll services. He goes on to say his goal is to have up to 25% of Blue Cross' operating income coming from non-health related businesses by 2014. Yes, you heard right; Blue Cross Blue Shield wants to start getting into businesses like payroll processing and other non-health related businesses, aka: moving away from the business of health insurance.

Wilson says the 2 million additional people in North Carolina who will have insurance as a result of health care reform is a positive outcome for the state but this will put more strain on an already shaky system. The article closes with Wilson revealing "Unless the industry is revamped and medical inflation tamed, it brings you to a doomsday scenario down the road."

Sounds pretty optimistic. All right, so what exactly does all this mean? Blue Cross Blue Shield has strong reason to believe that in a couple of years and as a direct result of health care reform, being a health insurance company will no longer be a profitable venture. This is a solid indication that insurance companies do not think the health care reform legislation will be able to fix the current problems with the health care system. In light of these revelations, Blue Cross Blue Shield has chosen to prepare for the worst by shrinking in size and diversifying into non-health related business. That's the bottom line. And sooner or later, I believe that other insurance companies will eventually follow suit.

Now this brings up a very interesting question. When Blue Cross Blue Shield leaves the health insurance business for good, who will be left to cover the millions of Americans who are going to be simultaneously added to an already shaky health insurance system?

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New Black Panthers free to go but not Arizona

Ann Coulter

So I guess all that hysteria about the Arizona immigration law was much ado about nothing. After months of telling us the Nazis had seized Arizona, when the Obama administration finally got around to suing, its only objection was that the law was "pre-empted" by federal immigration law.

With the vast majority of Americans supporting Arizona's inoffensive little law, the fact that Obama is suing at all suggests that he consulted exclusively with the craziest people in America before filing this complaint. (Which is to say, Eric Holder's Justice Department.) But apparently even they could find nothing discriminatory about Arizona's law. It's reassuring to know that, contrary to earlier indications, government lawyers can at least read English. Instead, the administration argues, federal laws on immigration pre-empt Arizona's law under the Supremacy Clause of the Constitution.

State laws are pre-empted by federal law in two circumstances: When there is a conflict — such as "sanctuary cities" for illegals or California's medical marijuana law — or when Congress has so thoroughly regulated a field that there is no room for even congruent state laws.

If Obama thinks there's a conflict, I believe he's made a damning admission. There's a conflict only if the official policy of the federal government is to ignore its own immigration laws.

Only slightly less preposterous is the argument that although Arizona's law agrees with federal law, Congress has engaged in "field pre-emption" by occupying the entire field of immigration, thus prohibiting even harmonious state laws. Field pre-emption may arise, for example, in the case of federal health and safety laws, so manufacturers of cars, medical devices and drugs aren't forced to comply with the laws of 50 different states to sell their products nationally.

And yet, just over a year ago, the Supreme Court held that there was no "field pre-emption" even in the case of an FDA-approved anti-nausea drug because Congress had not explicitly stated that state regulation was pre-empted.

The drug, Phenergan, came with the warning that, if administered improperly (so that it enters an artery), catastrophe could ensue. In April 2000, Phenergan was administered improperly to Diana Levine — by a clinician ignoring six separate warnings on Phenergan's label. Catastrophe ensued; Levine developed gangrene and had to have her lower arm amputated. Levine sued the health center and clinician for malpractice, and won.

But then she also sued the drug manufacturer, Wyeth Laboratories, on grounds that it should have included more glaring warnings about proper administration of the drug — like, I don't know, maybe a flashing neon sign on each vial.

Wyeth argued that since the Food and Drug Administration (after 54 years of study) had expressly approved the warnings as provided, state tort law was pre-empted by the federal drug regime. But the Supreme Court held that Congress had to make pre-emption explicit, which it had not, so Levine was awarded $6.7 million from Wyeth.

If ever there were a case for "implicit pre-emption," this was it. Without federal supremacy for the FDA's comprehensive regulation of drugs, pharmaceutical companies are forever at the mercy of state and local laws — and trial lawyers — in all 50 states.

As much as I would like pharmaceutical companies to rot in hell for their support of ObamaCare, I might need their drugs someday. Now drug prices will not only have to incorporate R&D costs, but also the cost of paying for trial lawyers' Ferraris. (Perhaps that should be listed as a side effect: "Caution! Improper use may cause nausea, dizziness, shortness of breath, and six new houses for John Edwards.")

But the point is: According to the Supreme Court's most recent pre-emption ruling, Arizona's law is not pre-empted because Congress did not expressly prohibit state regulation of illegal aliens. In fact, the Supreme Court has repeatedly rejected the pre-emption argument against state laws on immigrants — including laws somewhat at odds with federal law, which the Arizona law is not.

In the seminal case, De Canas vs. Bica (1976), the court held 8-0 that a California law prohibiting employers from hiring illegal immigrants was not pre-empted by federal law. The court — per Justice William Brennan — said the federal government's supremacy over immigration is strictly limited to: (1) a "determination of who should or should not be admitted into the country," and (2) "the conditions under which a legal entrant may remain." So a state can't start issuing or revoking visas, but that's about all it can't do.

Manifestly, a state law about ***illegal*** immigrants has nothing to do with immigrants who enter legally or the conditions of their staying here. Illegal aliens have neither been "admitted into the country" nor are they "legal entrants."

Indeed, as Brennan noted in the De Canas case, there's even "a line of cases that upheld certain discriminatory state treatment of aliens lawfully within the United States." (You might want to jot some of this down, Mr. Holder.)

So there's no "field pre-emption" of state laws dealing with aliens, nor is there an explicit statement from Congress pre-empting state regulation of aliens.

On top of that, the Supreme Court has repeatedly upheld state laws on immigrants in the face of pre-emption challenges. Arizona's law is no more pre-empted than the rest of them. Unless, of course, Obama is right and it's a violation of federal law to enforce federal immigration laws, which is the essence of the Department of Justice's lawsuit.

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