

THE AFFORDABLE CARE ACT

by Edwin D. Reilly, Jr.
for the Sunday Gazette

I don't subscribe to *Time* (magazine), but I saw its July 16 cover at my allergist's last Tuesday with the headline "Roberts Rules." Great play on the title of one of my favorite books, *Robert's Rules of Order*, the only difference between the phrases being the necessary apostrophe in the latter because the book's author in 1915 was the U.S. Army Colonel Henry Martyn Robert III, later a Brigadier General.

My first acquaintance with Robert's Rules came in the summer before my senior year in high school. I was selected to attend a week-long youth conference being held at McGill University in Montreal. Of several short "courses" given, by far the one I liked best introduced us to the rudiments of parliamentary law. Over many decades since, I have taken great pride and pleasure in being able to serve as my own parliamentarian at the hundreds of Town Board and other Board meetings at which I presided. And *Robert's Rules of Order* is a precision instrument, almost surgical in the rare moments when it must be wielded.

To operate, it is necessary not only to know the Robert book inside out, one must be thoroughly familiar with the basic documents that govern the organization. For city, town, and village governments in our state, they are thick sections of municipal law that are tailored to the differing needs and responsibilities of each. In the case of the Historical Society, they are our by-laws and constitution. When the Supreme Court convenes, the guiding document is, of course, the Constitution of the United States.

I love our language so much. And I liked the language of Justice Roberts' tie-breaking majority opinion too because he upheld the entire Affordable Care Act (ACA), including the mandate of Obamacare. I have been waiting years for his education as a Harvard lawyer to burst the bonds of his conservative upbringing, and finally it did.

But I would have preferred that he base his decision on the Constitution's commerce clause; using the Congress's powers of taxation gave hard-core Republicans the basis to claim that Obama has raised taxes on the middle class. Here's why he most certainly did not:

Not everything we pay when we submit our state or federal income taxes is a tax. One simple example is making a "gift to wildlife" on our NY State tax return. At the federal level, the extra amount that some have to pay because of late filing or initial underpayment is not a tax; it is a penalty for not doing what is required by law. The same will be true—future tense because this will not be until 2014—for the previously uninsured adult of reasonable means who could have bought insurance but so far has not. When he or she does so, the payment is a penalty for misfeasance, not a tax.

National Republicans are in a dither over the Roberts decision, of course, and even their putative candidate Mitt Romney is groping for a sensible response. The reason, of course, is that "Obamacare" is essentially the same, including the mandate, as the "Romneycare" that he, as governor, signed into law in Massachusetts. It has been so successful, with 98% of that state's residents now covered, that he should be touting it as a great accomplishment and a reason to vote for him.

Instead, the GOP congressional mantra is that they will "repeal and replace" the ACA on "Day One." Sure, provided that they hold the House, take control of the Senate, get

the 48 or so remaining Senate Democrats to stop requiring 60 votes to pass anything controversial, and, the toughest task of all, electing Mitt Romney.

And replace with what? Would the replacement include the popular features of the ACA that are already in place, such as a family's ability to keep their children on their policy up to age 26; the gradual elimination of the "donut" hole—the sudden stoppage and later renewal of Medicare Part D payments for medicine; and no discrimination against children with pre-existing conditions? And there are far more than those three benefits of the ACA already in effect; the actual number is eighteen! See <http://www.whitehouse.gov/healthreform/immediate-benefits>.

It may take a few more months for this to sink in, but it will. And then the great majority of Americans will realize that passage of the ACA was a great accomplishment, one perfectly in keeping with the preamble to the Constitution that we memorized in high school. Recite it with me:

"We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America."

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