

January 2, 2011

Facing a growing global population and growing energy consumption, it seems logical to assume that oil prices have increased significantly. [John Tierney and other Cornucopians](#) prove that assumption is wrong. Tierney notes he is following in the footsteps of the great [Julian Simon's famous wager with Paul "Malthus" Ehrlich](#). Tierney wrote about it 20 years ago in the NY Times Magazine in a 5,600 word article *...It's true that the real price of oil is slightly higher now than it was in 2005, and it's always possible that oil prices will spike again in the future. But the overall energy situation today looks a lot like a Cornucopian feast, as my colleagues [Matt Wald](#) and [Cliff Krauss](#) have recently reported. Giant new oil fields have been discovered off the coasts of Africa and Brazil. The new [oil sands](#) projects in Canada now supply more oil to the United States than Saudi Arabia does. Oil production in the United States increased last year, and the Department of Energy projects further increases over the next two decades.*

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[Noemie Emery](#) discusses Obamacare: liberals' pyrrhic victory that may still be, in Emery's words, a catastrophic success.

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In the NYPost, [Michael Walsh](#) comments on the MSM spin for Obama.

*So the year ends with the media pushing the notion that Barack Obama -- having had one of the worst years in presidential history -- has salvaged both his presidency and his re-election chances with his stunning "comeback" in the dwindling hours of the lame-duck session.*

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[Tony Blankley](#) gives a better assessment of the lame duck session than we find in the MSM.

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*...And don't think Obama merely took a week of embarrassment for that concession in December. We economic conservatives are still cheerfully reminding the public half a century later that President John Kennedy endorsed supply side marginal tax cuts. You can bet that Republicans will be reminding the public decades from now that "even Barack Obama" agreed to supply side tax-cut theory "way back in 2010."*

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[Jennifer Rubin](#) reviews the strong opposition to Obama's recess appointments.

*On Wednesday, Obama shed any pretense of bipartisanship in [making six recess appointments](#). As were his previous recess appointments, this batch included two individuals whose records are so controversial that they could not obtain confirmation even with 59 Democratic senators. Also included was Stephen Ford, nominated as ambassador to Syria and stymied as a forceful rebuttal to Obama's failed Syrian engagement policy. Roger Pilon of the Cato Institute voiced objection to bypassing the Senate, arguing that: "there were credible reasons why the Senate refused to confirm the several nominees Obama has just now given recess appointments, reasons that warranted full and proper Senate confirmation hearings." He contends that "the striking feature here is that once again, as in the lame duck session, this Congress and the president managed to put off these important matters until after the November elections, which will result in this case in officers serving without the benefit of the legitimacy that comes from Senate confirmation." A senior adviser to a key Republican senator was more succinct: "It is an outrage."*

*The most egregious appointment is undoubtedly James Cole, installed as the deputy attorney general. There were good reasons why he could not secure Senate confirmation. The Web site [Main Justice](#) explained that Sen. Jeff Sessions (R.-Ala.), the ranking Republican on the Senate Judiciary Committee, has strenuously objected to Cole's controversial stance on the War on Terror, which Cole expressed in a 2002 op-ed. ...*

*Sessions and other Republicans also objected to Cole's work on [behalf of AIG](#). Moreover, he represented a Saudi prince against 9-11 families ...*

*...What, if anything, can be done by the imperious recess appointments of such controversial nominees? Todd Gaziano of the Heritage Foundation emails me, "The real threat (which Robert C. Byrd famously did once) is for the entire GOP caucus" to refuse to consent to any further nominees unless Obama agrees to refrain from issuing more recess appointments. Gaziano says that Republicans "could refuse to confirm another judge, diplomat, etc. until they extract their promise." There is also the power of oversight (to grill appointees on how they intend to perform their jobs) and of the bully pulpit (to publicize the records of these nominees). But the lesson for the GOP here may be to refrain from offering too many open hands to an administration only too eager to slap them and demonstrate disdain for a co-equal branch of government.*

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## **NY Times**

### **[Economic Optimism? Yes, I'll Take That Bet](#)**

by John Tierney

Five years ago, Matthew R. Simmons and I bet \$5,000. It was a wager about the future of energy supplies — a Malthusian pessimist versus a Cornucopian optimist — and now the day of reckoning is nigh: Jan. 1, 2011.

The bet was occasioned by a [cover article](#) in August 2005 in The New York Times Magazine titled "The Breaking Point." It featured predictions of soaring [oil](#) prices from Mr. Simmons, who was a member of the [Council on Foreign Relations](#), the head of a Houston investment bank specializing in the energy industry, and the author of "Twilight in the Desert: The Coming Saudi Oil Shock and the World Economy."

I called Mr. Simmons to discuss a bet. To his credit — and unlike some other Malthusians — he was eager to back his predictions with cash. He expected the price of oil, then about \$65 a barrel, to more than triple in the next five years, even after adjusting for inflation. He offered to bet \$5,000 that the average price of oil over the course of 2010 would be at least \$200 a barrel in 2005 dollars.

[I took him up on it](#), not because I knew much about Saudi oil production or the other “peak oil” arguments that global production was headed downward. I was just following a rule learned from a mentor and a friend, the economist Julian L. Simon.

As the leader of the Cornucopians, the optimists who believed there would always be abundant supplies of energy and other resources, Julian figured that betting was the best way to make his argument. Optimism, he found, didn’t make for cover stories and front-page headlines.

No matter how many cheery long-term statistics he produced, he couldn’t get as much attention as the gloomy Malthusians like Paul Ehrlich, the best-selling ecologist. Their forecasts of energy crises and resource shortages seemed not only newsier but also more intuitively correct. In a finite world with a growing population, wasn’t it logical to expect resources to become scarcer and more expensive?

As an alternative to arguing, Julian offered to bet that the price of any natural resource chosen by a Malthusian wouldn’t rise in the future. Dr. Ehrlich accepted and formed a consortium with two colleagues at Berkeley, John P. Holdren and John Harte, who were supposed to be experts in natural resources. In 1980, they picked five metals and bet that the prices would rise during the next 10 years.

By 1990, the prices were lower, and the Malthusians paid up, although they didn’t seem to suffer any professional consequences. Dr. Ehrlich and Dr. Holdren both won MacArthur “genius awards” (Julian never did). Dr. Holdren went on to lead the [American Association for the Advancement of Science](#), and today he serves as [President Obama](#)’s science adviser.

Julian, [who died in 1998](#), never managed to persuade Dr. Ehrlich or Dr. Holdren or other prominent doomsayers to take his bets again.

When I found a new bettor in 2005, the first person I told was Julian’s widow, Rita Simon, a public affairs professor at American University. She was so happy to see Julian’s tradition continue that she wanted to share the bet with me, so we each ended up each putting \$2,500 against Mr. Simmons’s \$5,000.

Just as Mr. Simmons predicted, oil prices did soar well beyond \$65. With the global economy booming in the summer of 2008, the price of a barrel of oil reached \$145. American foreign-policy experts called for policies to secure access to this increasingly scarce resource; environmentalists advocated crash programs to reduce dependence on fossil fuels; companies producing power from wind and other alternative energies rushed to expand capacity.

When the global [recession](#) hit in the fall of 2008, the price plummeted below \$50, but at the end of that year Mr. Simmons was quoted in The Baltimore Sun sounding confident. When [Jay Hancock, a Sun financial columnist](#), asked if he was having any second thoughts about the wager, Mr. Simmons replied: “God, no. We bet on the average price in 2010. That’s an eternity from now.”

The past year the price has rebounded, but the average for 2010 has been just under \$80, which is the equivalent of about \$71 in 2005 dollars — a little higher than the \$65 at the time of our bet, but far below the \$200 threshold set by Mr. Simmons.

What lesson do we draw from this? I'd hoped to let Mr. Simmons give his view, but I'm very sorry to report that [he died in August](#), at the age of 67. The colleagues handling his affairs reviewed the numbers last week and declared that Mr. Simmons's \$5,000 should be awarded to me and to Rita Simon on Jan. 1, but Mr. Simmons still had his defenders.

One of his friends and fellow peak-oil theorists, Steve Andrews, said that while Mr. Simmons had made "a bet too far," he was still correct in foreseeing more expensive oil. "The era of cheap oil has ended," Mr. Andrews said, and predicted problems ahead as production levels off.

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## Weekly Standard

### [Catastrophic Success](#)

*The perils of a 'do everything' Democratic Congress.*

by Noemie Emery

Once upon a time, there was success and there was failure, and one could usually tell the difference between them—the first had a thousand fathers and the second was an orphan—but those days are over: The Democrats of 2010 have come up with a new variant, catastrophic success. That's what happens when you do something big, and it turns out quite badly, when you pass your agenda and get beaten for doing it, when you rack up a historic level of legislative achievements most of which most people hate. This is the fate of the Democrats' 2009-2010 Congress: In the old days, you failed when you didn't enact your agenda and were run against as a "do-nothing" Congress; it took Barack Obama, Harry Reid, and Nancy Pelosi to define failure as doing too much.

Seldom before has such a thing happened, but seldom before has an administration governed so against the grain of public opinion, and when this occurs, there are costs. The costs are the loss of the House by a landslide of epic proportions and the implosion of support for the president's party.



The success is the passage of Obama-care, which liberals believed would change things forever. Congresses come and go, so they said, while a historic reform is forever: It would live on, they averred, while the results of the midterms would blow off quite quickly. But even before the Eastern District Court of Virginia blew a large hole in Obamacare in early December, finding its individual mandate unconstitutional, there were signs that this bargain was taking on water. There are four little words to be said to these people: Don't be too sure.

Don't be too sure, in the first place, that the effects of these midterms will dwindle that fast. The elections this year were not like those of the previous conservative blowout. For one thing, 1994 did not end in 0. But 2010 does, which means "census," which means redistricting, which is a job done by the states. In this election, the voters gave control of most of the states to Republicans, who will use the opportunity voters gave them. How big was the Republicans' gain in statehouses? In three words, wide, sweeping, and deep. They picked up a record 680 seats in state legislatures. The tide swept through the Midwest, through big states and swing states, erasing gains Democrats had made in two previous cycles, turning one-time Obama states red. Republicans gained more than 100 seats in New Hampshire (which had gone for Obama); went in Michigan from a Democratic lead of 22 seats to a Republican lead of 16; went in Minnesota from being down 40 seats to being up 10; went in Iowa from being down 12 seats to being up 20; and went in Texas to a lead in the statehouse so commanding that a local reporter called it "an annihilation bordering on political genocide." At the same time, Republicans went from having 22 to 29 governors, including in all the key swing states.

The effects of this inland tsunami will help shape the future in several ways, of which redistricting is only the first. Republicans will redraw four times as many district lines as Democrats. This will influence the next five congressional elections, until the 2020 census comes along. Some observers think this alone could be good for between 15 and 25 seats in upcoming elections. That may be optimistic, but control of redistricting certainly can't hurt. Added to this, Obama now faces hostile state governments in *all* the swing states he won two years ago, including Pennsylvania, Michigan, and Wisconsin, as well as Ohio, Virginia, and Florida. He has to win most of these, or else he's a goner. Statehouses also give rise to the stars of the future and are the seedbeds from which governors, senators, and now and then presidents spring. The massacre in the states means the Democrats will have a weak bench going forward. Theodore and Franklin Roosevelt, as well as Obama, began on the state level. Were future Democratic stars drowned in the flood?

Congressmen talk, but governors govern and can present competing conservative models of government to put alongside Obama's ideas. New Jersey's Chris Christie and Virginia's Bob McDonnell, elected in 2009, have had great success already cutting taxes and spending, and the new class seems eager to follow their lead. These new governors are not only younger (and much more conservative), but also far more diverse. Republicans now have four female governors, two Hispanics, and two Indian-Americans—a more heterodox crew than the Democrats currently have. Some may find their way onto national tickets and, in doing so, change the idea of the party as the domain of the old, white, and male. They will vie for the lead in the fight against health care, and fittingly so, and it was this that elected them. In the coming two years, this will be their main battle. Democrats said that losing the House was a price well worth paying, but the loss of the states may be in the long run a great deal more costly. One of these governors may turn into the president who signs health care's repeal into law.

At the same time, don't be too sure that Obamacare is forever, at least not in the form that it passed. A Republican president could sign a repeal that was passed by a simple majority. The Supreme Court could declare it unconstitutional, as did the court in Virginia, which was only 1 of 24 state-propelled lawsuits, now making their way up the chain. (The case could reach the Court just in time for the 2012 election: with what impact no one can guess.) In the meantime, the GOP has made plans for a campaign of attrition, designed to soften it up for that coming election, and designed less to upend it

in one single motion than to inflict many cuts from a thousand directions, through which its life blood may trickle away. The House can block funds needed for implementation: money to hire the IRS agents needed to enforce the individual mandate; funds to run the board that approves cuts in Medicare; funds to help states set up insurance exchanges the states may not want to see formed.

The House will make life hard for the Democrats in the Senate, 23 of whom are up for reelection in 2012, and 13 of whom come from states in which Obamacare is extremely unpopular and which took a sharp turn to the right in the recent midterm elections. It will force them to vote over and over on health care, choosing between their constituents and their party and president, knowing their “aye” votes will find their way into commercials run by their GOP challengers, and their “nay” votes will enrage their own party’s base. When they voted “aye” for the first time (in December 2009) it was bad enough, but they had no way of knowing that the endgame would become quite so ugly, that the act itself would become quite so unpopular, or that Obama would become quite so unable to save them from voters’ hostility; now they know all of these things.

A parallel line of attack will be opened up by state governments, where the new crop of governors (and state representatives) will come in quite handy indeed. Complaining that compliance with the new law would bankrupt her state, Governor-elect Nikki Haley of South Carolina urged Obama to repeal his signature act outright, and then asked for opt-outs for some of its major provisions. In Virginia, the State Senate declared it illegal to mandate that the state’s residents buy health insurance, setting up a confrontation with the federal government. In Minnesota, Governor Tim Pawlenty directed state agencies to “reject participation in Obamacare unless required by law or consistent with existing state policy.” Some states are asking for waivers to opt out of parts of the health care reform act, others are considering dropping the Medicaid program in response to the expansion the new act demands. At the same time, they will pour on the political pressure in Washington: “We are going to form an oversight entity that will identify Washington programs that aren’t working, go to Capitol Hill and testify on how they can be handled better and propose . . . practices for how states can govern themselves without undue interference from the feds,” Republican Governors’ Association head Haley Barbour told the *Wall Street Journal*. What “Washington programs” might he have in mind?

Along with the lawsuits, and fights in the House and statehouses, there seems to exist a distinct possibility that the act may collapse of its weight. Assembled in haste—one might say desperation—and larded with deals to secure votes and backing, it is a 2,000-plus page assemblage of time bombs with varying fuse lengths that are starting to blow up in succession, causing large numbers of people inconvenience, or money, or both. Almost every provision seems to have some part that conflicts with another or contrives in some way to screw up the market in ways hitherto unforeseen. Increased costs are causing employers to drop people from coverage, to charge more for coverage, or to drop drug coverage for employees’ children. Thus far, 222 waivers have been granted to members of interest groups who favor the Democrats, enabling them to opt out of parts of the plan that might become onerous. Doctors are planning to shutter their practices. The promises made by Obama—about being able to keep your own plan or doctor—are turning out to be hollow. “Firms Feel Pain from Health Law” ran a recent article in the *Wall Street Journal* describing the problems faced by large and middle-sized businesses in trying to understand, much less to comply with, the act.

“There’s [an] administrative burden just to try and understand the 2,400 pages,” said one executive, describing the pain of spending so much time and money on things that aren’t helping their companies grow. Because of this, among other reasons, the bill continues to grow more unpopular, as six in ten people now favor repeal. “It’s looking more and more as if [the Patient Protection and Affordable Care Act] as passed is simply not politically (or practically) stable,” Megan McArdle wrote on the website of the *Atlantic*. “I think Democrats were counting on having more years to tweak it.□□.□□.□□. That was a very dangerous gamble .□□.□□. considering how badly it did in the polls.”

They counted on time to tweak it upward and left (assuming that history moves in just this direction), and now have to realize it will be tweaked downward and right, if it survives in the first place. And let us recall that all of their upbeat predictions—that Obama's numbers would go up by 10 points once he signed it (Bill Clinton); that people would reward Democrats for having "proved they could govern"; that people would ignore or get over the process that was used to pass Obamacare; that it would be accepted and grow popular, like Social Security—have proved to be wrong.

Don't be too sure, finally, that the damage Obama-care has done to the progressive agenda is something that can be quickly undone. Remember the hype at Obama's election? It was historic! It was transcendent! It was transformational, uppercase CHANGE! Conservatism was dead, said Sam Tanenhaus and a cadre of others. *Newsweek* affirmed that we were "all socialists now." The mainstream narrative held that the financial crisis had opened a door for Obama and Reid and Pelosi, and that their successes would feed a demand for more government. But the master plan failed to work out. The Democrats' "stimulus" gave birth to resistance; the mortgage bailouts conjured a Tea Party; and then it was health care reform—the act itself, along with the long fight to pass it—that brought it all tumbling down. Obama's job approval ratings were in the high 50s in April 2009, when he began selling health care; in the high 40s in December, when the Senate passed health care, and in the low 40s when Congress put the finishing touches to Obamacare in March 2010.

Along the way, independents discovered their inner Republican and swung against the man they had elected; conservatism had an astounding revival; and support for activist government, which had briefly ticked up with Obama's election to a 51-43 ratio, fell back two years later to 38-56. His legislative successes all added up to less faith in government: By the summer of 2010, a large group of liberals had succumbed to depression, as they sensed their successful battles had produced a lost war. "The storyline is much larger than merely that the stimulus has failed," wrote Michael Tomasky in the *Guardian*. "It is that government is a failure. . . . The great bottom-line hope back in November 2008 was that Obama was going to restore trust in government and prove it could solve problems. That hasn't happened." The chance of a lifetime has been squandered by liberals. Another won't come again soon.

Giddy with failure after the midterm elections, some on the left still insist it was all worth it, regardless of their losses. They "convinced themselves that their agenda . . . is the moral equivalent of the Voting Rights Act," as William Galston has put it, a cause whose grandeur justifies unpopularity and electoral defeat. But the Civil Rights and Voting Rights Acts were passed with healthy majorities and many votes from Republicans; they were unpopular in the deep South, but nowhere beyond it. While passing them, Lyndon B. Johnson won a spectacular blowout in the 1964 election, losing only the old South, plus his opponent's home state. Obamacare, however, has always been unpopular, is unpopular, everywhere and has only seen its unpopularity increase. Liberals claim an entitlement is never rejected, but the broad middle class doesn't think that this is one: It expects to pay more for less choice and less service, which fuels its strong opposition and pique.

There is no precedent for a bill of this size and scope being passed in defiance of the will of the public by a duly-elected majority which has nonetheless ceased to reflect or even acknowledge the views of the voters. For this reason, much of the public thinks it illegitimate, and sees nothing wrong in amassing a collection of weapons in the effort to see it undone.

If a Republican is elected in 2012, then health care is history. If health care is *the* issue, Obama will lose. If all things are equal, and it is *an* issue, a loss is still likely. If the economy rebounds strongly, Obama will probably win. But if it doesn't, and he loses because of this reason, then health care will have helped do him in. Businesses are sitting on loads of cash these days, reluctant to invest and add jobs until they know what will happen with regulations and taxes under this new health care dispensation, which may take effect, be radically altered in the states or by Congress, or be blown



away by the courts. They may not know until during or after the 2012 cycle, when the Supreme Court may weigh in, the wars in the states and the House may be settled, and they may have some idea who will be running the government in 2013. If the recovery stalls through 2012, it will be very bad news for the president.

The Democrats' problem is that their losses are locked in and a given, while the state of their "win" remains highly precarious. If Obama wins, his health care regime may still emerge diminished and battered. If he loses, for whatever reason, then Obamacare is gone.

**NY Post**

**[His own worst enemy](#)**

by Michael A. Walsh

So the year ends with the media pushing the notion that Barack Obama -- having had one of the worst years in presidential history -- has salvaged both his presidency and his re-election chances with his stunning "comeback" in the dwindling hours of the lame-duck session.

Don't believe a word of it.

If generals are always fighting the last war, then the pundits are always reaching for the last cliché. Did Bill Clinton face a similar dilemma back in 1994, after Newt Gingrich and the Republicans ate his lunch? Did *he* not come back to marginalize Gingrich and -- that little impeachment trifle aside -- depart office still popular?

Very well then, all Obama has to do is "triangulate" -- i.e., pretend to agree with both sides -- and the great unwashed "centrist" electorate will flock back to his banner. After all, it worked for the original "Comeback Kid."

For starters, this ignores several major distinctions between Clinton and Obama. Slick Willie learned his skills growing up in the crime-syndicate town of Hot Springs, Ark. Say what you will about those old gangsters, they knew how to run an effective political operation, by turns tough and solicitous, happy to raise money for the widows and orphans their trigger men had just created.

By contrast, Obama is a displaced person adopted by the far cruder Chicago machine, which turned his superficial charm and his palpable animus against the American ideal into a winning combination in the perfect storm 2008 election.

More important, it's unclear that Obama has it in him to compromise and pretend to like it. No one could fake sincerity like Clinton, but Obama is a far different sort of political animal. His tax-deal press conference was a remarkable glimpse behind the Wizard of Oz curtain at a scowling man who believes his political opponents are "hostage-takers" and enemies -- not just of the people, but of him personally.

So try as the media might, there's simply no way that a few lesser legislative victories translate into a refreshed political potency. When you've been humbled on taxes by the minority Republicans and failed to pass an omnibus budget, you've been beaten soundly on matters of domestic policy -- a clear signal that the incoming Tea Party-infused Republican majority in the House is already having an effect. And when one of your great victories is the repeal of "Don't Ask Don't Tell," a Bill Clinton initiative . . .

None of this stops the left or its media cheerleaders from spinning a horrible year for both the president and the country into a triumph of the human spirit. Obama's "victories" in the "productive" lame-duck session may not be the end of "High Noon," but for now they'll have to do.

What's next? Look for the media to start laying the groundwork for the 2012 campaign. The new House GOP majority will be tagged as "extremists." Reporters will circle the incoming freshmen, hoping to pick off enough of them to dilute the ferocity of their mission. Speaker John Boehner will be implored to find "common ground" and, if he doesn't, will get the full brunt of the Gingrich treatment as the primaries heat up. Of course, the slightest uptick in the economy will be hailed as the proof of the rightness of Obama's policies.

Finally, every move Obama makes as he confronts the reality of the 112th Congress will be hailed as a Machiavellian masterpiece. It won't matter whether it's good for the country: To the media as well as to the Democrats, the only thing that really counts is electoral success.

Still, unless Obama undergoes a vast personal metamorphosis, it probably won't work. He's too inexperienced a politician and too starchy a man. He himself has said he'd rather be a good one-term president than a failed two-term president, but the way things are going, he may end up having it both ways, minus the "good."

Obama's worst enemy is not Boehner, or Sarah Palin, or any Republican; it's himself.

*Michael Walsh, a former associate editor of Time, is the author of "Hostile Intent" and "Early Warning" and, writing as David Kahane, "Rules for Radical Conservatives."*

## Washington Times

### No Clintonian Comeback for Obama

by Tony Blankley

Don't believe all the Washington talk that President Obama had a great lame duck session and goes into the new year and the new 112th congress with the whip hand. Utter nonsense.

Let's review the lame duck session as it happened -- not as it has been instantly revised by the ever-obliging Washington press corps.

In the first week or so, the president capitulated to Ronald Reagan's supply side theory that tax cuts expand the economy, and tax increases contract it. The central policy was to not let expire the Bush tax cuts, not only because it would be tough on middle-class taxpayers, but also, the White House argued, because keeping tax rates down would be good for the economy.

Even the great triangulator, Bill Clinton, never conceded this point. In 1993, he raised taxes by about \$400 billion to manage the deficit. And, while the economy slowed down briefly to a mere 1.9 percent GDP growth, the new dot-com technology business brought us the great economic expansion of the later 1990s -- so Clinton never conceded to supply side theory.

And don't think Obama merely took a week of embarrassment for that concession in December. We economic conservatives are still cheerfully reminding the public half a century later that President John Kennedy endorsed supply side marginal tax cuts. You can bet that Republicans will be

reminding the public decades from now that "even Barack Obama" agreed to supply side tax-cut theory "way back in 2010."

This is a historical intellectual capitulation of the first order by the Democratic Party president.

After that political defeat, the president had to endure another weak week when his party leaders in the Senate tried to jam through a trillion-dollar spending bill with more than 6,000 earmarks. Republican leader Sen. Mitch McConnell held firm, tea partiers across the country began to roar and the president's allies quickly capitulated, with the White House agreeing to a short-term extension of spending -- importantly leaving most of the 2011 spending in the hands of the incoming 112th Congress, not the infamous spendthrift 111th.

This was a second defeat for the president and his party -- which, please remember, continued to hold its huge majorities in both the House and the Senate.

The final week of the lame duck is the thin reed on which the president's alleged lame duck success is constructed. He lost on his goal of passing the Dream Act -- which was designed to appeal to Hispanic votes. He passed -- on a bipartisan basis -- "don't ask, don't tell" and the confirmation of the Start Treaty.

The DADT passage was a legislative victory. But if -- as most of our non-politicized senior military officers and about 60 percent of our combat troop rank and file believe -- this new policy will reduce recruitment at a time when combat troop shortages are already hampering field success, there may be a long-term price for this short-term legislative success.

If, on the other hand, no serious problems emerge, I don't believe the DADT passage gives the president any special political advantage in the out years.

Finally, the Start Treaty was confirmed in the Senate with most Democratic senators and a large handful of Republicans. This is hardly a partisan triumph. Almost the entire Republican foreign policy establishment supported it. Even the Republican Senators who opposed its December passage were only holding out for some minor amendments on nuclear modernization and missile defense authorization.

They got a promise from the president of \$80 billion for nuclear modernization -- which six months ago would have been called a GOP triumph -- and still is.

And they got a letter from the White House that the treaty does not conflict with our right to develop missile defense -- another triumph for the GOP from a White House that has shown little enthusiasm for our defensive technologies.

Only because the Republican Senate leaders unshrewdly did not take yes for an answer -- and continued to oppose Start -- did the president get the appearance of a victory.

In fact, despite the president believing it is historically consequential, the confirmation of the Start Treaty is a minor foreign policy matter today (30 years ago, during the Cold War, it would have been a central accomplishment). The real nuclear threats today are from Iran and North Korea -- on both fronts of which President Obama is an utter failure, as was his predecessor President George W. Bush.

Despite the sobriquet "The Comeback Kid" given to Obama by the brilliant, normally politically spot-on conservative gentleman and columnist Charles Krauthammer, Obama has not come back.

Clinton gave himself that compliment after he came in second in the New Hampshire Democratic Party presidential primary just days after he and Hillary had appeared on "60 Minutes" to admit -- in the face of the Gennifer Flowers illicit sex scandal -- that their marriage had been rocky, but would survive (which it famously has). In Clinton's case, he had come back politically.

In Obama's case, he enters 2011 facing more than 80 new Republican congressmen and senators, most of whom would make Barry Goldwater look soft on limited government and deficit spending.

On those central issues of 2011, the president either capitulates or storms in defiance and gridlock. He has not come back from political crisis; he has only inflamed his formidable opposition across the country.

## Right Turn

### [So much for bipartisanship -- a slew of recess appointments](#)

by Jennifer Rubin

On Wednesday, Obama shed any pretense of bipartisanship in [making six recess appointments](#). As were his previous recess appointments, this batch included two individuals whose records are so controversial that they could not obtain confirmation even with 59 Democratic senators. Also included was Stephen Ford, nominated as ambassador to Syria and stymied as a forceful rebuttal to Obama's failed Syrian engagement policy. Roger Pilon of the Cato Institute voiced objection to bypassing the Senate, arguing that: "there were credible reasons why the Senate refused to confirm the several nominees Obama has just now given recess appointments, reasons that warranted full and proper Senate confirmation hearings." He contends that "the striking feature here is that once again, as in the lame duck session, this Congress and the president managed to put off these important matters until after the November elections, which will result in this case in officers serving without the benefit of the legitimacy that comes from Senate confirmation." A senior adviser to a key Republican senator was more succinct: "It is an outrage."

The most egregious appointment is undoubtedly James Cole, installed as the deputy attorney general. There were good reasons why he could not secure Senate confirmation. The Web site [Main Justice](#) explained that Sen. Jeff Sessions (R.-Ala.), the ranking Republican on the Senate Judiciary Committee, has strenuously objected to Cole's controversial stance on the War on Terror, which Cole expressed in a 2002 op-ed. Cole wrote:

"[T]he attorney general is not a member of the military fighting a war -- he is a prosecutor fighting crime. For all the rhetoric about war, the Sept. 11 attacks were criminal acts of terrorism against a civilian population, much like the terrorist acts of Timothy McVeigh in blowing up the federal building in Oklahoma City, or of Omar Abdel-Rahman in the first effort to blow up the World Trade Center. The criminals responsible for these horrible acts were successfully tried and convicted under our criminal justice system, without the need for special procedures that altered traditional due process rights.

Our country has faced many forms of devastating crime, including the scourge of the drug trade, the reign of organized crime, and countless acts of rape, child abuse, and murder. The acts of Sept. 11 were horrible, but so are these other things."

Sessions and other Republicans also objected to Cole's work on [behalf of AIG](#). Moreover, he represented a Saudi prince against 9-11 families as this report from the [Examiner](#) explains:

Cole represented Saudi Prince Naif bin Abdulaziz Al-Saud when insurance carriers and September 11 survivors sued him and others for financing terrorists. Treasury Department documents provided evidence of extensive financial support for Al-Qaeda and other extremist groups by members of the Saudi royal family and Prince Naif ran the Al Haramain Foundation, a Saudi charity that diverted funds to Al-Qaeda before and after September 11, 2001.

There is little wonder that Senate Democrats were indifferent to Republican efforts to block this nomination. House Homeland Security Chairman Peter King (R.-N.Y.) issued a statement deploring the recess appointment, declaring:

"I strongly oppose the recess appointment of James Cole to lead the national security team at the Department of Justice. The appointment indicates that the Obama Administration continues to try to implement its dangerous policies of treating Islamic terrorism as a criminal matter.

"After the American people, and the Democratic Congress, unequivocally rejected President Obama's plans to close Guantanamo and transfer admitted 9/11 mastermind Khalid Sheik Mohammed to the United States for trial in federal civilian court, I find it absolutely shocking that President Obama would appoint someone who has diminished the 9/11 terrorist attacks by comparing them to the drug trade and who believes that a civilian courtroom is the appropriate venue for 9/11 trials.

"This may be one of the worst appointments by President Obama during his presidency. The Justice Department needs a strong Deputy Attorney General who understands that our country remains at war with Islamic terrorists who continually plot deadly attacks against Americans, not a left-wing ideologue who places terrorists in the same categories as drug peddlers."

Similarly, Debra Burlingame, co-founder of Keep America Safe and the sister of a pilot slaughtered on 9-11, tells me via email, "Cole filed a brief on behalf of Prince Naif in which he derided the basis of the families' lawsuit as pure fantasy. One hopes that was Cole, the advocate, rather than representative of his personal point of view." She bluntly observes that "his remarks, less than one year after 9/11) comparing Wahabbi-inspired terrorism to the drug trade or lone nut McVeigh are, to me, disqualifying. He's dreadful."

A human rights activist well-versed in the Middle East tells me, "I've met Prince Naif. He's a tremendous human rights abuser, having trampled the rights of religious minorities in Saudi Arabia." His view is that "anyone who does represent such a guy should have no expectation of government service, particularly in a job involving counter-terrorism issues."

As for the recess appointment of Francis J. Ricciardone Jr. as ambassador to Turkey, multiple objections were raised at the time he was nominated stemming from his tenure as ambassador to Cairo. [Josh Rogin reported in Foreign Policy](#):

The Bush administration exerted special efforts to promote democracy and human rights in Egypt, a longtime recipient of billions in military and economic aid, and a close U.S. partner on regional security matters. . . . Then Secretary of State Condoleezza Rice delivered a ringing 2005 address on democracy at the American University in Cairo, calling on Mubarak to embrace political reform.

Those efforts came crashing down months later, amid the widespread fraud and violence of Egypt's parliamentary elections. The opposition Muslim Brotherhood performed surprisingly well in the early rounds, prompting a harsh government crackdown that continues to this day. When Hamas shocked the world by winning the Palestinian elections the following January, the Bush administration appeared to lose its appetite for promoting Arab democracy altogether.

Former top National Security Council aide Elliott Abrams blames Ricciardone.

"Especially in 2005 and 2006, Secretary Rice and the Bush administration significantly increased American pressure for greater respect for human rights and progress toward democracy in Egypt. This of course meant pushing the Mubarak regime, arguing with it in private, and sometimes criticizing it in public. In all of this we in Washington found Ambassador Ricciardone to be without enthusiasm or energy," Abrams told The Cable.

[Senator Sam Brownback \(R.-Kansas\)](#) was a particularly vocal critic of the nomination.

Finally, although Ford is a respected diplomat, his recess appointment as ambassador to Syria drew a swift rebuke from the new House Foreign Affairs chairwoman Ileana Ros-Lehtinen. Her statement read in part:

"I am deeply disappointed that the President decided to make such a major concession to the Syrian regime. Using this Congressional recess to make an appointment that has far-reaching policy implications despite Congressional objections and concerns is regrettable. . . . Making underserved concessions to Syria tells the regime in Damascus that it can continue to pursue its dangerous agenda and not face any consequences from the U.S. That is the wrong message to be sending to a regime which continues to harm and threaten U.S. interests and those of such critical allies as Israel."

What, if anything, can be done by the imperious recess appointments of such controversial nominees? Todd Gaziano of the Heritage Foundation emails me, "The real threat (which Robert C. Byrd famously did once) is for the entire GOP caucus" to refuse to consent to any further nominees unless Obama agrees to refrain from issuing more recess appointments. Gaziano says that Republicans "could refuse to confirm another judge, diplomat, etc. until they extract their promise." There is also the power of oversight (to grill appointees on how they intend to perform their jobs) and of the bully pulpit (to publicize the records of these nominees). But the lesson for the GOP here may be to refrain from offering too many open hands to an administration only too eager to slap them and demonstrate disdain for a co-equal branch of government.



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