

## SOMETHING DIFFERENT IN THE AIR? THE COLLAPSE OF THE SCHWARZENEGGER HEALTH PLAN IN CALIFORNIA

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*In January, 2007, California Governor Arnold Schwarzenegger proposed a state universal health care plan modeled after the Massachusetts individual mandate program. A year later, the plan was dead. Although some key interest groups eventually backed the plan, it was overwhelmed by a looming state budget crisis and a lack of gubernatorial focus. Although much acclaimed for his stance on greenhouse gases, stem cells, hydrogen highways, and other Big Ideas, diffused gubernatorial priorities and a failure to resolve California's chronic fiscal difficulties let the clock run out on universal health care.*

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*In the past, health care reform was always dead on arrival. But this year I can feel something different in the air. I can feel the energy, the momentum, the desire for action . . . You can feel the time is right . . . California is going to lead the nation in breaking new ground to meet the health care needs of its people.*

Governor Arnold Schwarzenegger  
State of the State Address, January 9, 2007<sup>1</sup>

*I wish I could be standing here in front of you today with the Senate having passed our health care reform. But just because the Senate has missed this golden opportunity . . . doesn't mean we should walk away from reforming our broken health care system.*

Governor Arnold Schwarzenegger  
One year later  
Sacramento Press Club luncheon, January 29, 2008<sup>2</sup>

With the failure of his proposal for a universal health plan in early 2008, California Governor Arnold Schwarzenegger became the second of the state's governors to suffer such a defeat. In a previous issue of *WorkingUSA*, I described how Earl Warren as governor failed on three occasions to enact such a plan in the 1940s.<sup>3</sup> Was there any similarity in the failures of these two Republican governors—separated by seven decades—to enact a major change in California's health insurance delivery system?

Despite the passage of much time, there were similarities. Both governors faced complaints on the left that their proposals were not a sufficiently radical departure from the *status quo*. Both faced complaints on the right that the plan

would be too expensive. Both faced opposition from service suppliers—doctors in the Warren case and the state’s major health insurance company in the Schwarzenegger case. And both governors, although for different reasons, were not able to focus sufficient political energy on the task of getting the job done.

Of course, there were significant differences between the two time periods. Warren generally operated in the face of an expanding California economy, first fed by the wartime boom of World War II, and then by the postwar expansion. Schwarzenegger became governor largely because of an economic downturn and a related budget crisis that ultimately led to the 2003 recall of his predecessor, Gray Davis. As also reported in this journal, Schwarzenegger tried to fix the budget through a shift to the right and a push for four ballot initiatives in 2005, all of which failed.<sup>4</sup> And because the underlying budget problem was never really fixed, Schwarzenegger’s health plan reached a critical legislative decision point just as the state budget was entering a new crisis.

### Background

*We have more than 6.5 million people without insurance, nearly one-fifth of our population so the rest of us pay their bills. When they need care, the uninsured go to emergency rooms that have become so over-crowded you can wait seven hours to see a doctor. And more than 60 emergency rooms have closed in the past decade because they didn't want to keep treating people without insurance.*

Governor Arnold Schwarzenegger  
January 8, 2008<sup>5</sup>

In broad terms, the problem of those Californians without health insurance is the same as exists in any other state. The Schwarzenegger quote of 6.5 million uninsured appears to refer to an estimated number of individuals without coverage at some time during the year 2005. A UCLA study for that year put the number at any point in time at 4.8 million, based on current population survey data.<sup>6</sup> However, it is clear that California has a higher rate of non-insurance than the national average; it ranked third among the states in terms of non-coverage during 2005.<sup>7</sup>

Those individuals without insurance often end up in emergency rooms which provide uncompensated care if patients cannot pay. The results of having to provide free care are first an attempt by hospitals to pass the costs on to paying patients (or their insurers) and second the closure of private emergency rooms. When emergency rooms in private hospitals close, the expense and patient load shifts to public hospitals. The issue in California is exacerbated by greater income polarization than in the rest of the U.S., a phenomenon associated with immigration. A UCLA Center for Health Policy study pointed out that illegal immigrants account for 24 percent of the state’s uninsured and deemed that percentage as “*a small share.*” But it is not clear that “*small share*” is the appropriate descriptor for a group accounting for almost one fourth of the problem.<sup>8</sup>

*Direct Democracy*

While California's problem with lack of health insurance is not unique among the states—even if larger in absolute magnitude—its political institutions for dealing with the problem are constraining. California's politics are conditioned by the direct democracy that was ushered in by the Republican progressives early in the twentieth century. The initiative (a petition-originated law or constitutional amendment), referendum (a petition-originated repeal of a legislative action), and the recall (a petition-originated removal of a public official from office before his/her term ends) are mainstays of the state's political process.

*Constraints on Legislative Decision Making*

Although these progressive-era ballot devices were often seen as components of non-partisan decision making, partisan political stalemate in the California legislature has increasingly characterized the making of state public policy. Part of the explanation is political district making through which most California legislators have safe seats. Political contests for open legislative seats are thus largely contained within the party primaries, where political activists are decisive. Although Democrats have dominated both houses of the legislature since the late 1990s, two features of the state constitution give considerable veto power to the minority Republicans. To pass a budget in California, a two-thirds vote of both houses is required, a feature of fiscal policy that goes back to the Great Depression. Voters overwhelmingly rejected a proposition to reduce this requirement to 55 percent as recently as 2004.<sup>9</sup>

At one time, the needed votes to pass a budget could be obtained by buying off a few marginal Republicans with public works in their districts or some other prize. Greater party unity has made this buy-off approach more difficult in recent years. Gerrymandered districts contribute to the political stalemate. But so, too, do term limits, imposed by voters on the legislature by initiative in 1990. Legislators, not long after winning election, must begin thinking about running for some other office in the future; long-term careers in either house are not available. Voters, however, like having term limits as much as they like the two-thirds restriction. Attempts to relax the limits by initiative as recently as 2008 have failed.

The two-thirds requirement has also applied to general tax increases since the passage in 1978 of Proposition 13. Proposition 13 is widely viewed as a property tax limitation, one which sparked the national taxpayers' revolt of that era. However, apart from its drastic cut in local property taxes, the proposition imposed a two-thirds requirement for legislative votes on tax increases to make it more difficult for the property tax cut to be offset by some other tax increase. As will be seen below, the twin two-thirds requirements played an important role in killing the governor's health insurance plan.

The majority and minority leaders in the two houses are subject to term limits and so their ability to work with the governor and impose unpleasant

comprises on their fellow legislators is constrained. And in the case of health care in 2007, Assembly Speaker Fabian Núñez—a one time political director of the Los Angeles County Federation of Labor—and Senate President Don Perata—a former public school teacher—were often at cross purposes.<sup>10</sup> Ultimately, Núñez partnered with the governor and supported a modified version of his plan. Perata, in contrast, while nominally supportive, became one of the key legislators who killed it.<sup>11</sup>

Despite partisan rancor and intra-party rivalries, the legislature does have one influential nonpartisan element, the Legislative Analyst's Office (LAO). This Office was created by the Legislature in the 1940s to give it an information and research capability that was previously largely in the hands of the governor. The current Legislative Analyst, Elizabeth Hill, has been in that position since 1986 and joined the LAO staff originally in 1976. She is sometimes termed the "budget nun" for her ability to point to unpleasant aspects of the state's fiscal affairs. Term limits have probably strengthened the LAO, since most legislators do not have the experience or expertise to challenge LAO opinions. Ultimately, Hill was to deliver the *coup de grace* to the governor's health program by raising doubts about its costs.

### *The Governor*

When Arnold Schwarzenegger first began to contemplate a run for the governorship, he faced two barriers. The idea of a recall of the incumbent governor was not in the air at the time. Thus, to become governor, Schwarzenegger would have to win a Republican primary—something the 2003 recall ultimately allowed him to bypass. But his positions, particularly on social issues, were potentially not appealing to the median Republican voter. In addition, he would need to convert himself from a movie star into a serious political candidate. His political advisors therefore decided that to introduce Schwarzenegger to the electorate, he should sponsor a ballot initiative of some type. If it succeeded, Schwarzenegger could then present himself as a successful participant in the making of state public policy.

Schwarzenegger is a self-professed admirer of economist Milton Friedman and Friedman's free market, libertarian approach. But when asked by his advisors what kind of initiative he would want to sponsor, he first suggested a plan to provide health insurance to all California children.<sup>12</sup> Schwarzenegger's political advisors quickly steered him away from that idea—which, they thought, would not appeal to Republicans in some future primary. Instead, they came up with an initiative that would earmark a portion of the state's general fund to after-school athletic activities. Schwarzenegger agreed and the initiative appeared on the ballot in 2002 as Proposition 49—and passed. Ironically, as governor, Schwarzenegger would later decry voter initiatives that put state spending on autopilot through formulas and earmarks.

The fact that Schwarzenegger, even before running for governor, suggested expanding health insurance coverage by initiative is significant. Apparently, the

issue of the uninsured was long salient to him. Exactly why that was the case is unclear. Was it his upbringing in Austria with its universal health coverage? Was it a reflection of the influence of his wife, a Kennedy-family Democrat? Or was it something else? In any event, a state universal health plan was not an idea that Milton Friedman would have endorsed!

Even apart from health care, however, it is clear that as governor Arnold Schwarzenegger liked the promotion of big ideas. Limiting greenhouse gases and fighting global warming, the “hydrogen highway,” stem cell research, reforming the state’s political process, and the development of large infrastructure projects—including water and flood control—were all part of his gubernatorial agenda. Early in 2007, a political cartoon appeared in the *Los Angeles Times* showing a large Governor Schwarzenegger at a big desk with such big idea issues before him while a small President Bush, hoping he could someday be governor of California, sat at a little desk with Iraq in flames nearby.<sup>13</sup> In the fall of 2007, the governor’s big ideas on global warming won him a speech to the United Nations on that issue. Even after the health bill failed (along with a major gubernatorial effort on new water projects), the governor was profiled in *Esquire* as the model for new politics and “post-partisanship.”<sup>14</sup> To be sure, there was also media criticism of a diffused gubernatorial agenda.<sup>15</sup> But big ideas seem to pay off in terms of favorable publicity even when the actual results were limited.

### *Prior Health Insurance Proposals*

After Earl Warren’s failure to enact a state health insurance plan in the 1940s, serious health insurance proposals did not reappear as a major state political issue in California until the 1990s. In 1992, angered by the growing trend toward managed care, the California Medical Association pushed for passage of Proposition 166, basically an employer mandate plan. However, due to its lax cost controls—a reflection of the doctors’ frustration with managed care—Proposition 166 was opposed by both organized labor and business. It received only 31 percent of the vote. Proponents of a single-payer plan, a state-run insurance fund to replace private insurance, placed Proposition 186 on the ballot in 1994. That proposition received only 27 percent of the vote. After those two electoral failures, and with the failure of the Clinton health plan at the federal level, the issue of the uninsured again became largely dormant in California.

In 2003, however, two bills were introduced in the legislature. One was a single-payer plan pushed by State Senator Sheila Kuehl.<sup>16</sup> The other was a pay-or-play employer mandate, an approach endorsed by then-Senate President John Burton.<sup>17</sup> Burton, however, did not expect to pass his bill that year; the bill was essentially a draft meant to be a vehicle for legislative hearings that might ultimately produce a more finished product at some point in the future. Suddenly, however, the gubernatorial recall loomed and it became more and more likely that Democratic Governor Gray Davis would be unseated. As a result, the legislature quickly passed the Burton Bill (SB 2). Governor Gray Davis signed it shortly before he was recalled, hoping to pick up some liberal voter support.

By accident, therefore, California suddenly had in place a major health coverage expansion in 2003. However, the business community was unhappy with the new mandate and had concerns (as in 1992) about lack of sufficient cost control. A referendum (Proposition 72) was placed on the ballot to repeal the Burton Bill and—by a rather narrow margin, 51 percent—it succeeded in killing the plan in 2004 before it took effect. Once the Burton Bill was rejected by the voters, any future health plan would have to be endorsed by the new governor, Arnold Schwarzenegger.

Schwarzenegger made it clear that he would not support any health plan that was either a state-run single-payer program (the Kuehl bill) or an employer mandate/pay-or-play alone (the Burton bill). During the 2006 gubernatorial election, the Democrats in the legislature passed Senator Kuehl's single-payer plan and sent it to the governor, knowing in advance he would veto it. Predictably, he did, declaring that "socialized medicine is not the solution to our state's health care problems."<sup>18</sup> Thus, once Schwarzenegger was reelected, and had signaled that 2007 would be the year for health care, the single-payer approach was at least temporarily pushed off stage as a politically feasible approach.

### *The External Players*

Although the governor can veto any health plan sent to him by the legislature, he cannot by himself enact one. Apart from the internal dynamics of the legislature, various interest groups are involved—and there are disagreements within these groups about appropriate policy. The California labor movement is quite influential in state politics. In the 1990s, the so-called labor-Latino alliance developed in the context of the Justice for Janitors and other union organizing campaigns.<sup>19</sup> Assembly Speaker Fabian Núñez is a product of that alliance.

However, various factions exist among the unions on the health care issue. Some, notably the California Nurses Association, favor single-payer. Others favor an employer mandate (in part to level the playing field between unionized firms and nonunion competitors that do not provide health insurance). And still others were ultimately willing to compromise with the governor. Notably the state Service Employees International Union (SEIU)—particularly after great pressure from its national president, Andy Stern—eventually fell into that camp.

The business community also was split over health insurance. The California Chamber of Commerce opposed the governor's plan, but the Los Angeles Chamber endorsed it. Generally, small business opposed any employer mandate to provide health insurance on the grounds of cost. But some larger businesses—those which already do provide insurance—see the same virtue in leveling the playing field that some in the union movement do. A notable spokesperson for this view was Safeway CEO Steve Burd. Burd was seen as the villain by unions in the bitter 2003 supermarket strike in southern California—

which was fought in large part over the health insurance issue.<sup>20</sup> But he and Andy Stern ultimately became partners in support of the Schwarzenegger proposal.

The health industry itself is divided into suppliers—chiefly physicians and hospitals—and the major insurers. All can agree that something should be done about the uninsured—but not about what that something is. Thus, TV ads were sponsored by various groups during 2007 advocating doing something—but not specifying anything in particular. The health insurance industry, both HMOs and conventional insurers, ended up split on support for the Schwarzenegger plan. The largest insurer, Blue Cross, ran radio ads of the “Harry and Louise” type to raise public suspicion of any broad reform.<sup>21</sup> But Kaiser Permanente—the giant health maintenance organization (HMO)—ultimately backed the Schwarzenegger plan. Generally, the health insurance industry has been consolidating with a few large companies dominating the California market.<sup>22</sup> The big insurers are fully capable of funding expensive political campaigns for or against any public policy.

### Too Many Ideas?

*This year we must take action on health care. Yesterday, I announced my proposal. I know you also have your proposals and I love that. I have always said you can never have too many ideas.*

Governor Arnold Schwarzenegger  
State of the State Address, January 9, 2007<sup>23</sup>

The Schwarzenegger health proposal was in general terms patterned after the 2006 Massachusetts plan passed under Republican Governor Mitt Romney.<sup>24</sup> A key element in that plan was an individual mandate. All residents were to be required to have health insurance. But they were allowed to obtain it through employer-based coverage or some public program. Those persons who did not have such group coverage were to be required to obtain it individually. However, lower-income individuals would have been given a sliding scale of state subsidy. An employer pay-or-play mandate was also included. By achieving universal or near-universal coverage, the insurance demon of adverse selection would have been avoided.<sup>25</sup>

### *Tax or Fee?*

In pushing his version of the plan, Governor Schwarzenegger emphasized the idea that there was already a crude version of universal care in place in California since the uninsured were guaranteed attention in emergency rooms, even if they could not pay. The cost of this indirect coverage he labeled the “hidden tax” which ended up being paid by those with insurance or by public expenditures. Although the hidden tax concept was a valid one, the terminology was aimed at dealing with the objection that the initial version of the plan

contained various fees on doctors and hospitals that might be viewed as taxes. Because of the two-thirds requirement, the fee versus tax distinction was also important as a legal matter—user fees escape the two-thirds tax rule. But arguing there was already a *de facto* tax in place suggested that even if the user fees were to be thought of as taxes, they were really more rational substitutes for an existing tax.

The plan as originally proposed involved an expansion of Medi-Cal (California-speak for Medicaid) to low-income adults, expansion of the state's Healthy Families program to low-income children, a purchasing pool allowing low-income individuals not otherwise covered to obtain insurance with costs to them ranging from 0 to up to 6 percent of income, a pay-or-play mandate for all employers of more than ten workers (with a tax for those who pay rather than play of 4 percent of payroll). The costing guru for the governor's plan, and other plans that were proposed, was Professor Jonathan Gruber of MIT. Gruber arrived with a model honed on the Massachusetts version. He estimated that there were 4.9 million uninsured in California below age sixty five, the Medicare eligibility age. The governor's plan would reduce this number, he projected, to 800,000.<sup>26</sup>

Not surprisingly, the individual mandate was an especially controversial element of the Schwarzenegger proposal since it involved costs to many lower-income individuals and families. Senate President Perata and Assembly Speaker Núñez both submitted their own plans (SB 48 and AB 8, respectively), neither of which had an individual mandate. Both had pay-or-play mandates for employers and expansions of public programs. Both—and especially the Núñez version—had requirements that insurers accept all applicants—a giant red flag for insurers due to potential adverse selection.

The Senate bill pushed more uninsured into public programs while the Assembly bill had a greater emphasis on expanded employer-based insurance. Absent the governor's individual mandate, both left a larger residual of uninsured persons, projected by Gruber as 1.5 million.<sup>27</sup> All plans were modified as the year progressed. Also in the legislature was the Kuehl single-payer plan (SB 840) that had been previously vetoed by the governor but benefited over the summer of 2007 from the release of the Michael Moore film "Sicko" which promoted the single-payer approach.<sup>28</sup> However, given Governor Schwarzenegger's previous veto of the Kuehl plan, it was never seriously in play in 2007.

### *Republican Opposition*

In his January 2007 State of the State address, Governor Schwarzenegger declared that "my Republican friends have said, 'we will get this done.'" If so, they did not elaborate to him what "this" was. It was clearly not the governor's plan, nor was it anything with a fee, tax, or mandate. Indeed, no Republican would even introduce the Schwarzenegger plan, even as a courtesy, and the governor was evidently reluctant to have a Democrat do so.



The Republicans did come up with a package of reforms aimed at making private health care more affordable, but not mandating coverage by employers or individuals.<sup>29</sup> In short, there were four health plans in the legislature, three from the Democrats and the Republican package. But the governor's plan was essentially a press release; in contrast to the other proposals, there was no actual bill to be considered in a legislative hearing.

### **Distractions**

*I believe that we can renew the climate of this planet. I believe this 100 percent. So I pledge to you, the members of the United Nations, that we in California will work with all our heart to this end for which we all long.*

Governor Arnold Schwarzenegger  
Speech before the United Nations, September 24, 2007<sup>30</sup>

Although 2007 was the year of health insurance, for the governor it was also the year of global warming, enhanced infrastructure for flood control and water projects, and numerous other attractive issues. One that was not so attractive was the state budget. Despite rhetoric in 2004 about “throwing away the credit card,” the borrowing approved by the voters to deal with the cash crunch and deficits left by Governor Davis did not solve the chronic tendency of the state to spend more than available revenue. The 2006–2007 budget—the one in effect when the governor's health plan was announced—was a deficit budget. And by early 2007, the subprime mortgage crisis and the bursting of the housing bubble were signaling future budgetary problems. As the year went on, the economic and budgetary danger signals became more and more apparent.

The California fiscal year begins on July 1. Because of the two-thirds vote requirement, a budget stalemate left California without a budget for almost two months into the 2007–2008 fiscal year. When the budget was signed in late August 2007, those attending the ceremony seemed willing to pretend that the newly enacted bill was balanced. But as the year progressed and the state budget situation worsened, it was increasingly difficult to maintain that pretense. Fiscal distress became progressively linked with the health proposal. Opponents could argue—and did—that California should not be undertaking new initiatives in the face of an impending budget crisis.

In the end, it appeared that the governor's health agenda was under-promoted for much of 2007. There was a push in January immediately after the plan was announced, with gubernatorial speeches to business groups and others. But the issue then languished, or at least became lost among a variety of other gubernatorial agenda items. Only one speech by the governor on the subject of the health plan was given in February and another in March. The same leisurely pace continued into August while the legislature was stalemated over passage of the state budget. And during that time, there still was no actual bill containing the governor's proposal.

## Problems

*I want to spend very little time on that because it doesn't move us forward. What moves us forward is to solve the problem.*

Governor Arnold Schwarzenegger  
Commenting on the fee versus tax issue<sup>31</sup>

*Costs of the plan could be higher than forecast to the extent that: (1) the uninsured population is larger; (2) growth in costs of medical care outpaces the growth in wages and payrolls; or (3) the cost of providing coverage through the state pool is higher than anticipated.*

Report of the Legislative Analyst's Office  
February 15, 2007<sup>32</sup>

There were two major legal hurdles to the Schwarzenegger plan. One was external. An earlier attempt at an employer mandate in Maryland had been overturned on the grounds that federal law regarding work-related benefits preempted such state action.<sup>33</sup> That issue also would have faced the Perata and Núñez plans, had they passed. Since no plan was adopted, the matter was never addressed in court or elsewhere.<sup>34</sup>

The other barrier was the two-thirds requirement for tax increases. If the various “fees” that were part of the governor’s proposal were in fact ruled to be taxes in some eventual court challenge, the financing side of the plan would collapse—since the Republican legislators would not provide the needed supermajority to pass a tax. However, the governor professed—until it became absolutely untenable to do so—that the fee versus tax question was not a real issue.<sup>35</sup>

Apart from the legal issues, there was the matter of cost. The governor insisted that his proposal was self-financing and would place no burden on the state’s general fund. But like any large program that runs into the indefinite future, projections of revenues and costs cannot be made with certainty. As noted earlier, although public attention was not focused on fiscal matters at the time the governor announced his proposal, the 2006–2007 state budget was in fact in deficit. Thus, the Legislative Analyst early on sounded a note of caution about initiating a major new program which might turn out to be underfunded and therefore might in the future become a draw on public revenue.

On the governor’s left, Senator Kuehl pointed to California’s earlier electricity deregulation fiasco that had led to rolling blackouts, bankrupt utilities, and high-energy costs. Models of what deregulation would produce when it was passed proved to be inaccurate. Why might the same not occur with forecasts of revenue and cost associated with the governor’s health plan?<sup>36</sup> On his right, Republican Senator Dave Cox stated that, “We frankly don’t believe the state of California has the ability or could afford universal coverage.”<sup>37</sup>

Although the left and right had symmetrical concerns about the fiscal side of the governor’s plan, the left disliked the individual mandate. The specter was

raised of individuals compelled to have insurance who could not afford the premiums, despite subsidies. “We’re going to punish them if they don’t go out and buy health insurance on their own—health insurance that they can’t afford at the moment that they are least able to afford it,” said a labor union official opposed to the plan.<sup>38</sup>

### Events Unfold

*There’s a great spirit in the Capitol. That doesn’t mean that people are not fighting and arguing. Yes, they do, but in the end I think they all want to accomplish those great, great kinds of things that need to be accomplished.*

Governor Arnold Schwarzenegger  
Speech to California Medical Association, April 24, 2007<sup>39</sup>

Since there was no bill from the governor in the hopper, Democrats in the legislature decided in late April 2007 to concentrate on reconciling the Assembly and Senate leadership health plans. They thought it would be best to leave the governor to deal with his erstwhile Republican friends. Either he would eventually win some Republicans over to support the plan or, perhaps, he would come to support some version of the Democrats’ proposal. By late June, the two Democratic plans were in fact merged into a single bill, essentially a pay-or-play employer mandate financed through a 7.5 percent payroll tax, which the Republican leadership declared would “devastate our state’s small business.”<sup>40</sup>

Given the uncertainty about what the California health plan might turn out to be, various groups positioned themselves around the general issue. AARP and the California Medical Association favored a major reform—but not any particular reform. Steve Burd, the CEO of Safeway, led a business coalition generally in favor of the governor’s approach. The California Chamber of Commerce, on the other hand, was not supportive, although the Los Angeles Chamber of Commerce was. Restaurant owners said they would back a sales tax increase, but not a payroll tax or employer mandate, for universal health care.<sup>41</sup> Blue Cross, the state’s largest insurer, was opposed and cautioned against “unintended consequences” of an unnamed reform.<sup>42</sup> But other major insurers supported doing something. Unions tended to be stand-offish on any plan that had an individual mandate.

Doctors and hospitals were the targets of the governor’s proposed fees. But he argued they would net come out ahead, particularly since federal money was added to the plan, because the proposal would eliminate uncompensated care. For doctors, this notion was a hard sell—too hard—because most do not provide uncompensated care. The president of the Los Angeles County Medical Association characterized the fee as illogical: “It’s like having a tax on teachers to fund education.”<sup>43</sup> Given doctor opposition, eventually the doctor fee component had to be dropped—leaving a financial hole in the plan.

On the other hand, hospitals did eventually go along with their fee or tax. Like doctors, not all hospitals provide uncompensated care. And the costs vary

among those that do. But there are fewer hospitals than doctors and the notion that hospitals as a whole would come out ahead under the plan was attractive. The trick was to move dollars around so that individual hospitals would come out ahead, not just the collectivity. Such an approach was easier to do with the limited number of hospitals as compared to the myriad doctors in California. In the end, the hospitals and the governor worked out such an arrangement and the California Hospital Association endorsed the deal.<sup>44</sup>

If Governor Schwarzenegger had sought merely to start a conversation about universal health coverage, he certainly did so. But the legal and political problems entailed in his specific proposal remained unresolved. The legislative counsel ruled in June that the fees the governor proposed were in fact taxes that would require a two-thirds vote of the legislature (and would thus require Republican support). Ironically, the lack of a bill encompassing the governor's plan was then cited by a spokesperson as a counter to the legal opinion. Without a bill, he said, "you can't definitely say what (the plan) is and what it is not."<sup>45</sup>

But the fact was that there was no bill and that progress on the health care issue pretty much came to a halt after July 1, 2007. On that date, the state began its fiscal year without a new budget; absent a two-thirds vote, the legislature was unable to move and the fiscal stalemate began to overwhelm other issues. By early August, a poll found that only 36 percent of California voters thought it very likely or somewhat likely that a major health care reform could pass in 2007.<sup>46</sup>

Although the two Democratic leadership plans had been merged into one, the governor said he would veto it, if passed. In retaliation, to demonstrate that the governor had no Republican support for his own plan, Assembly Speaker Núñez threatened to put the governor's proposal into bill form in late August and force it to a vote. It was clear that the Republicans—although labeling Núñez's threatened vote as a "political stunt"—would reject its tax features and thus the overall plan, thereby embarrassing the governor.<sup>47</sup>

## Deal?

*Fundamentally, health care is a right and not a privilege, and it ought to be afforded to everybody. Make no mistake about it, this is truly an historic effort.*

Fabian Núñez  
Assembly Speaker<sup>48</sup>

*The real issue now is the deficit and how this squares with everything else that we are going to do.*

Don Perata  
Senate President<sup>49</sup>

The threat of a forced vote on the governor's plan sparked a negotiation between Núñez and the governor and the two came together on a unified proposal. Perata seemed to go along, but always reluctantly. No Republicans

were ever involved. Essentially, the new version would contain the individual mandate and other major features of the governor's proposal. The legislature would pass everything but the tax element. To circumvent the legislative two-thirds vote requirement for new taxes, the financing side would go to the voters as a ballot proposition. Núñez originally rejected this bifurcated approach and remained unhappy with the individual mandate.<sup>50</sup> But at the end of the day, there was no alternative if there was to be any plan at all. No tax could go through the legislature. And the governor would veto a bill that had no individual mandate.

A complex deal was worked out. The Democrats would pass their unified employer mandate plan which the governor would veto, thereby proving to outside interest groups that such a plan was not going to be on the table. The governor and Núñez (with Perata seemingly on board) would then get behind the individual mandate deal they had arranged. The governor would call two special sessions of the legislature in the fall for both health care and "water storage" ("water storage" is a California euphemism for "dams" which Republicans like and environmentally conscious Democrats, but not all Democrats, detest). During the special sessions, the health plan minus financing would be passed and the financing side would go on the ballot. And a bond issue for water storage would also be put on the ballot.

There remained the hole in the financing left by the refusal of doctors to go along with a fee or tax on their revenue. Governor Schwarzenegger initially proposed that the hole could be filled by leasing out the state lottery. Núñez rejected that approach and favored hiking the state tobacco tax, an approach that might be more certain in revenue if enacted but which raised the possibility of a major fight with the tobacco industry. Perata in particular had doubts about taking on Big Tobacco.<sup>51</sup> If the ballot proposition failed due to an expensive campaign by the tobacco industry, the entire plan would fall. Ultimately, however, the governor went along with the tobacco tax.<sup>52</sup>

The Núñez-Schwarzenegger plan was passed by the Assembly on December 17, 2007. Behind the scenes, a deal was cut with the Service Employees regarding compensation for publicly paid home care aides. The president of the Service Employees, Andy Stern, swiftly removed a state union official who had been opposing the individual mandate approach. There was to be union funding for Proposition 93, an initiative that would have changed term limit restrictions and extended the terms of Núñez and Perata (and others in the legislature). And the California Federation of Labor provided a "support if amended" label to the Assembly plan. The governor endorsed Proposition 93, even though he had also said his support would be contingent on combining relaxation of term limits with legislative redistricting (which was not done). There is the old joke about it being preferable not to know how sausage is made. "A flurry of activity" was how a Núñez spokesperson described hurried deal making involved in preparing the health care sausage in the Assembly.<sup>53</sup>

By the time of the Assembly passage, 64 percent of voters were reported to favor strongly or favor somewhat the health plan.<sup>54</sup> And upon its passage, an elaborate press conference was staged featuring the governor, representatives

of organizations such as AARP, Andy Stern of the SEIU, Steve Burd of Safeway, and an impassioned endorsement from a maverick Republican, the mayor of Fresno.<sup>55</sup> But Perata was notably absent and in fact had called on the Legislative Analyst—who had earlier expressed concerns about the potential costs of the plan—to cost out the new Assembly version. Governor Schwarzenegger bravely asserted that there was no problem in obtaining support from the Senate; Perata “just wants to now iron out some of the last-minute details,” he opined.<sup>56</sup>

### Collapse

*Our motivation was the budget, and it was no more complicated than that.*

Senate President Don Perata  
Explaining the Senate Health Committee rejection<sup>57</sup>

In delaying Senate action until the Legislative Analyst could report, Senator Perata had in effect planted a ticking time bomb in the process. His requested report would take a month to prepare. By that time, the governor would have to present his new budget proposal, which would reveal the sorry condition of California’s fiscal affairs. The resulting Legislative Analyst’s report explored various scenarios using the Gruber model as part of the analysis. Plan proponents’ assumptions were used and, not surprisingly, produced a fiscally healthy outlook. But with other assumptions viewed by the Analyst as more reasonable, a deficit by fiscal year 2014–2015 was found although there was still money in the till at that point. With still more pessimistic, but reasonable, cost assumptions, there was both a larger deficit and a negative balance in 2014–2015.

Really, the financial details did not matter by that point. With the legislature now looking at major budget cuts, anything that suggested more potential costs—even if in 2014–2015—could be cited as a compelling reason to reject a major new program. When the eleven-member Senate Health Committee voted on January 28, 2008, there was only one favorable (Democratic) vote for the plan. All the Republicans, as expected, voted against it. Except for the one favorable vote, the other Democrats either voted “no” or abstained. Among the naysayers was Senator Sheila Kuehl, still advocating her single-payer approach.

Although Governor Schwarzenegger later termed the rejection “a bump in the road,” the road has been effectively closed on universal health care until the budget problem is resolved, something unlikely to happen soon.<sup>58</sup> And despite his bump remark, the governor well understood the seriousness of the budget problem he was facing and its propensity to overwhelm everything else. When asked in late January 2008 about his endorsement in the upcoming California presidential primary, the governor facetiously said that “any candidate that writes a \$14.5 billion check to the state of California, I would endorse. It’s as simple as that. Anyone, Democrat or Republican alike.”<sup>59</sup> Sadly, no such candidate emerged and the health plan could not be rescued.<sup>60</sup>

### Post-Mortem

*If it were easy, California would have gotten universal coverage 60 years ago—that's when Governor Earl Warren's reform plan fell short by a single vote.*

Governor Arnold Schwarzenegger  
Reacting to Senate Health Committee's rejection of the health plan<sup>61</sup>

In many respects, what killed Earl Warren's California health plan also killed the Schwarzenegger plan. Unlike Schwarzenegger, Warren was not facing a deteriorating budget. But he did have other issues on his agenda besides health care; he could not spend all of his political energy on health. Warren's attempts to pass a health plan in 1945 were undermined by interest group opposition (chiefly from organized medicine and business) and an uncharacteristic lack of initial gubernatorial political spadework. In contrast, his 1947 attempt to create a California health system took place when he had another major project as a priority: creating the California freeway system.

Warren called a special session of the legislature in 1947 to deal with his plan to upgrade the state highway system, which was straining after a period of neglect during the Great Depression and the very rapid population growth during World War II.<sup>62</sup> His highway plan—involving hiking the gas tax and earmarking the revenues in a trust fund—led to major opposition from oil companies. Apart from their vehement opposition, Warren had to deal with conflicts between urban and rural legislators and between different regions of the state, and with numerous other complications entailed in his highway proposal.

The battle over the highway plan involved radio addresses and press conferences by the governor and much legislative arm twisting and cajoling. But in the end, Warren prevailed on roads, even as he lost on health. Thus, while California did not become a model for the nation in 1947 on health insurance, it did become the model—nine years later—for the federal interstate highway system, financed as in California by a gas tax and trust fund.

The lesson from the Warren and Schwarzenegger efforts on health is that governors are limited in advancing their programs. Ultimately, priorities have to be set. Not every battle can be won. Warren attained one out of two of his major goals in 1947, freeways but not health insurance. Schwarzenegger lost on health insurance in 2007. However, what he attained in other areas was limited by his profusion of objectives. The push for greenhouse gas emission limits, hydrogen highways, stem cells, and water projects detracted from a concentrated effort on health insurance. Schwarzenegger's health plan was not even translated into an actual bill until late in the year. The fee versus tax issue was also left hanging. And the resulting hole in the financing side led to a jerry-rigged tobacco tax and ballot initiative.

It should have been clear even in early 2007 that budgetary problems would become increasingly pressing as the year progressed. The 2006–2007 budget that was in place when the governor first proposed his health plan was already

in deficit. California's housing price bubble was bursting and the likelihood of economic problems leading to fiscal distress was growing. If a plan for universal health insurance was to come to fruition, it needed to be enacted before the budget crowded out other concerns. But serious negotiations between the governor and legislative leaders did not take place until the fall. There were too many interest groups to co-opt and too many issues of finance to be left to the last minute to resolve. In retrospect, the failure to enact the Schwarzenegger health plan was a combination of the clock running out and a proliferation of other distracting gubernatorial agenda items.

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### Notes

1. Transcript available at <http://www.gov.ca.gov/speech/5143/>.
2. Quoted in Andy Furillo 2008, "Governor: 'Time to regroup,'" *Sacramento Bee*, January 30.
3. Daniel J. B. Mitchell 2002, "Earl Warren's lost cause: How the United States might have had Canadian-style health insurance," *Working USA*, Vol. 5 (Summer), 1–25. Warren proposed two versions of what would now be called a single-payer plan based on a employer-employee payroll tax in 1945. Both failed in the legislature. After his reelection in 1946, he proposed a "pay or play" type plan in 1947 (employers would provide health insurance or have to pay into a state fund to do so). It also failed.
4. Daniel J. B. Mitchell 2006b, "'They want to destroy me,' how California's fiscal crisis became a war on 'big government unions,'" *Working USA*, Vol. 9 (March), 99–121. The Schwarzenegger budget plan involved a formula-based accumulation of a "rainy day fund," plus authority for the governor to cut the budget in times of fiscal distress. He also proposed a "paycheck" protection initiative on the theory that public sector unions pushed for more spending and defunding them would make his job easier, a limit on teacher "tenure" (on the theory that teachers' unions in particular made budget reform difficult), and a redistricting plan (on the theory that a less partisan legislature would be more frugal).
5. Remarks from speech unveiling health insurance plan. Transcript available at <http://ca.gov/index.php?/print-version/speech/5066/> (Schwarzenegger 2007b).
6. E. Richard Brown, Shana Alex Lavarreda, Ninez Ponce, Jean Yoon, Janet Cummings, Thomas Rice 2007, "The state of health insurance in California: Findings from the 2005 California health interview survey," July, [http://www.healthpolicy.ucla.edu/pubs/files/SHIC\\_RT\\_072807.pdf](http://www.healthpolicy.ucla.edu/pubs/files/SHIC_RT_072807.pdf).
7. Florida and Arizona had higher rates according to Current Population Survey estimates for 2005. See <http://www.census.gov/compendia/statab/tables/08s0147.pdf>. (U.S. Bureau of the Census 2005).



8. E. Richard Brown, Nadereh Pourat, and Steven P. Wallace 2007, "Undocumented residents make up small share of California's uninsured population," *UCLA Center for Health Policy*, (March), [http://www.healthpolicy.ucla.edu/pubs/files/UninUndoc\\_FS\\_032807.pdf](http://www.healthpolicy.ucla.edu/pubs/files/UninUndoc_FS_032807.pdf).
9. Proposition 56 received 34 percent of the vote.
10. Perata represented an East Bay senatorial district (the 9th) containing such cities as Oakland and Berkeley. Núñez represented the 46th Assembly district that includes downtown Los Angeles.
11. Perata and the governor did not have a warm relationship going into 2007. During 2006, a private conversation between the governor and staff members was leaked to the media in which the governor called Perata "a very sick man." See Kevin Yamamura 2008, "Little love lost between Perata and Schwarzenegger," *Sacramento Bee*, March 10. Term limits also played a complicated role in the health plan story. Proposition 93, on the ballot in February 2008, would have relaxed term limits in a way that would have allowed both Perata and Núñez to continue. Otherwise, both would be termed out in 2008. Núñez wanted the governor's support for Proposition 93 and probably hoped his cooperation on health would obtain it. Perata seemed more dubious about Proposition 93, although he would have benefited from its passage. The governor eventually did reward Núñez with support for Proposition 93 but it failed at the polls. And by the time Perata played a key role in killing the health plan, it appeared likely from public opinion survey data that Proposition 93 would not pass.
12. The episode is recounted in Joe Mathews 2006, *The people's machine: Arnold Schwarzenegger and the rise of blockbuster democracy* (New York: Public Affairs, pp. 74, 82).
13. The cartoon by Tom Toles of the *Washington Post* appeared in the *Los Angeles Times* opinion section on January 13, 2007.
14. Tom Junod 2008, "Arnold Schwarzenegger is president of 12 percent of U.S.," *Esquire*, March. Available at <http://www.esquire.com/print-this/features/arnold-schwarzenegger-0308>. The article does not point to the failure of the health plan, although it features it prominently as an example of Schwarzenegger's new brand of politics.
15. Anthony York 2007a, "Enough green glory, governor. Now get back to work," *Los Angeles Times*, April 22.
16. Kuehl represents a liberal senatorial district (the 23rd) including parts of the west side of Los Angeles and Santa Monica. She was the first openly gay member of the legislature and was a former child TV actress.
17. Burton was a liberal state senator from the Bay Area who also served earlier as a congressman. He was noted for colorful language. In describing his role as Senate president, he noted, "You get votes by people either agreeing with you or you can threaten to beat them up with a baseball bat—which usually doesn't work—or you find out what they want in return; and if a guy says I'll vote for your park, but I want my park . . . case closed." Quote from an interview with Robert Scheer 2006 at [http://www.truthdig.com/interview/item/200601024\\_john\\_burton\\_california\\_arnold/](http://www.truthdig.com/interview/item/200601024_john_burton_california_arnold/).
18. Press release of September 5, 2006, <http://ca.gov/index.php?/text/press-release/3751/> (Schwarzenegger 2006).
19. For details, see Ruth Milkman 2006, *LA story: Immigrant workers and the future of the U.S. labor movement* (New York: Russell Sage Foundation).
20. The major supermarket chains pushed for cost sharing of health insurance with workers and a two-tier arrangement that limited access to health coverage for new hires. Ultimately, the employers succeeded in obtaining these features although the two-tier element was largely eliminated in the subsequent 2006 contracts.
21. The 1994 Harry and Louise ads featured a couple fretting about what the Clinton plan would do to their health coverage. In the 2007 California context, TV ads for doing something and the alternative Harry and Louise type radio ad are available at <http://www.youtube.com/watch?v=POKToIYg3Ow>. The original Harry and Louise ads are available at <http://www.youtube.com/watch?v=Dt31nhleeCg>.
22. About 90 percent of the private HMO market in California in 2005 was in the hands of Kaiser, Blue Cross, Blue Shield, Cigna, Aetna, PacifiCare, and Health Net. Kaiser is only an HMO. The remaining firms had about 70 percent of the Preferred Providers Organization (PPO) market. These estimates were kindly provided by Dylan Roby of the UCLA Center for Health Policy at my request and come from data collected by the California health interview survey.
23. Transcript available at <http://www.gov.ca.gov/speech/5143/> (Schwarzenegger 2007c).

24. Termed-out Republican assemblyman Keith Richman was an advocate of applying the Massachusetts plan to California during his last year in office in 2006. Richman—a physician—was one of the few members of the legislature who attempted to work across party lines on issues such as the state budget. It is likely that he had some influence on the governor's 2007 proposal.
25. A description of the Massachusetts plan can be found at <http://www.lawlib.state.ma.us/healthinsurance.html> (Massachusetts Trial Court Law Libraries 2006).
26. The governor's plan did not attempt to mandate that adult illegal aliens acquire insurance. Indeed, it would be difficult to enforce such a requirement.
27. A summary of the initial versions of the Perata, Núñez, and Schwarzenegger plans is available at California Senate, Office of Research 2007, <http://www.sacbee.com/static/weblogs/crossroads/healthcare/archives/healthplancompare.doc>.
28. Gruber did not make estimates of the impact of the Kuehl plan.
29. Republicans dubbed their program involving over 20 bills as "Cal care." See California Senate, Republican Caucus 2007, <http://republican.sen.ca.gov/calcare/overview.asp>.
30. Schwarzenegger 2007a Speech available at <http://www.americanrhetoric.com/speeches/arnoldschwarzeneggerunitednations.htm>.
31. Bill Ainsworth 2007, "No-tax vow a faint echo in governor's health plan," *San Diego Union-Tribune*, January 28.
32. California Legislative Analyst's Office 2007, Governor's health care plan: State fiscal risks, February 15, Available at [http://lao.ca.gov/handouts/Health/2007/Governors\\_Health\\_Proposal\\_02\\_15\\_07.pdf](http://lao.ca.gov/handouts/Health/2007/Governors_Health_Proposal_02_15_07.pdf).
33. The potential conflict involves the Employee Retirement Income Security Act.
34. It is worth noting that the City of San Francisco was putting into effect a universal health plan for its residents at this time involving an employer pay-or-play mandate and a subscription for care by municipal health clinics. The federal preemption issue was raised regarding the San Francisco plan but at this writing the plan has so far prevailed in court.
35. John Myers 2007, "Fee? Tax? Fuhgeddaboutitt," *Capitol Notes*, June 21, available at: <http://blogs.kqed.org/capitalnotes/2007/06/21/fee-tax-fuhgeddaboutitt/>.
36. Clea Benson 2007, "Senate panel warned on health plan's cost," *Sacramento Bee*, February 15.
37. Anthony York 2007b, Governor's health-care plan gets no introduction," *Capitol Weekly*, February 1.
38. Beth Capell, a lobbyist for the state SEIU, quoted in Jordan Rau 2007c, "Proposal: Get health insurance or pay fine," *Los Angeles Times*, April 11. As noted below, the SEIU national leader, Andy Stern, eventually supported the governor's plan and overrode such local objections.
39. Quoted in Aurelio Rojas 2007a, "Assembly panel approves coverage for uninsured," *Sacramento Bee*, April 25.
40. Assembly minority leader Michael Villines quoted in Jordan Rau 2007d, "Sacramento democrats merge health plans," *Los Angeles Times*, June 22.
41. Daniel Weintraub 2007, "Restaurant owners back sales tax for health care," *Sacramento Bee*, August 26.
42. Victoria Colliver 2007, "Blue cross group takes issue with the governor's plans," *San Francisco Chronicle*, May 26.
43. Dr. David Aizuss quoted in Deborah Crowe 2007, "L.A. medical association leader opposes governor's plan," *Los Angeles Business Journal*, July 16.
44. Jordan Rau 2007b, "Hospitals back governor's healthcare plan," *Los Angeles Times*, September 7.
45. Gubernatorial spokesperson Adam Mendelsohn quoted in Jordan Rau 2007a, "Calif. healthcare overhaul moves forward," *Los Angeles Times*, June 8.
46. California Field Poll 2007a released August 22, available at <http://field.com/fieldpollonline/subscribers/Rls2239.pdf>.
47. Shane Goldmacher 2007, "Núñez vows health plan vote," *Los Angeles Times*, August 25.
48. Quoted in Aurelio Rojas 2007b, "Health revamp takes a big step," *Sacramento Bee*, December 18.
49. "Perata wants LAO report on health legislation's impact on budget," *Capitol Alert* 2007, December 17.
50. Aurelio Rojas and Jim Sanders 2007, "Health tax called sure loser," *Sacramento Bee*, September 5.

51. Aurelio Rojas 2007c, "Lottery lease plan dropped," *Sacramento Bee*, December 15, 2007.
52. California HealthCare Foundation 2007, <http://www.calhealthreform.org/content/view/60>.
53. Michael Rothfeld and Jordan Rau 2007, "Núñez sweetens deal for unions," *Los Angeles Times*, December 20.
54. California Field Poll 2007b, December 21. Available at: <http://field.com/fieldpollonline/subscribers/Rls2254.pdf>.
55. Highlights of this event can be seen at <http://www.youtube.com/watch?v=GYMZ27gfmTI>, <http://www.youtube.com/watch?v=B9WEnZrNoOo>, and <http://www.youtube.com/watch?v=CxDd6LIVzZY>.
56. Quoted in Aurelio Rojas 2007d, "Perata, Núñez split on health care plan," *Sacramento Bee*, December 17.
57. Quoted in Andy Furillo 2008, "Governor: time to 'regroup,'" *Sacramento Bee*, January 30.
58. Mike Zapler 2008, "Health plan dead? Not so, says governor," *San Jose Mercury News*, February 13, 2008.
59. Quoted in Capitol Alert 2008, January 31, available at <http://www.sacbee.com/static/weblogs/buzzplus/010300.html>. At the time, the two-year deficit for 2007–08 and the forthcoming 2008–09 was estimated at about US\$14.5 billion.
60. In fact, the governor endorsed Republican John McCain, who did not promise US\$14.5 billion.
61. Quoted in Aurelio Rojas 2008, "Health plan defeated," *Sacramento Bee*, January 29.
62. Daniel J. B. Mitchell 2006a, "Earl Warren's fight for California's freeways: Setting a path for the nation," *Southern California Quarterly*, vol. 88 (Summer), 205–238.

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