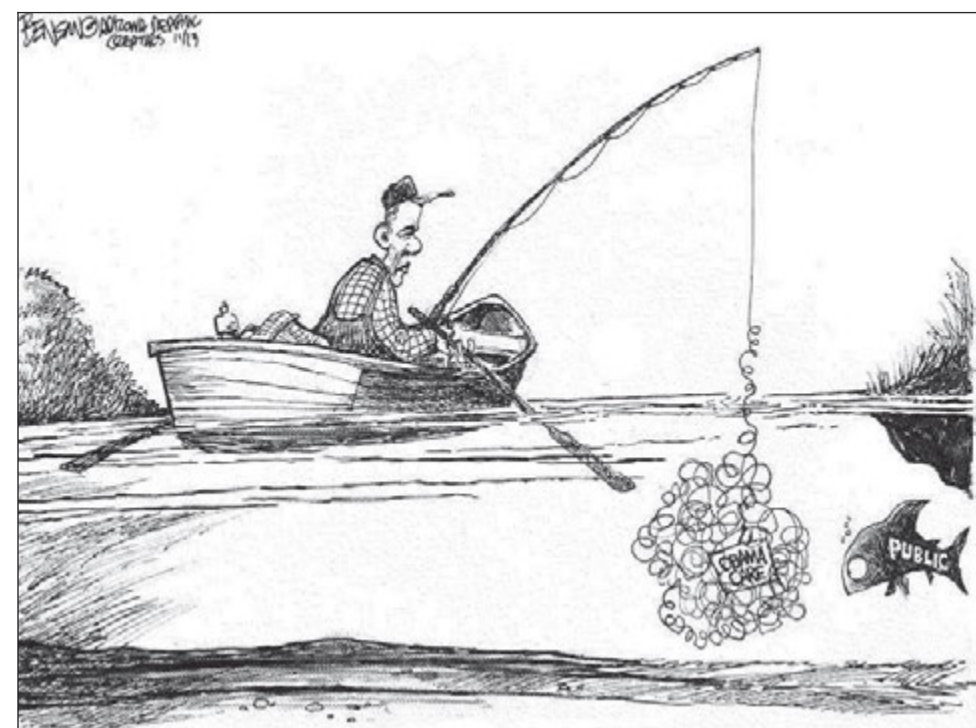


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Rework Obamacare to win elections

By **PETER MORICI**
FOR THE REGISTER

Republicans should stop cheering for Obamacare to fail. It may be dreadful, but going back to what we had before is not possible. The real political hay is to be made improving the law to lower prices and premiums – details Democrats forgot.

The Affordable Care Act imposes more than a dozen new taxes, highly focused on those who will profit from more customers – for example, the levy on medical device makers and insurance companies – or who generally don't vote for Democrats anyway – the 3.8 percent tax on interest income for richer Americans.

A small portion of the population is covered by individual health insurance policies, vulnerable to cancelation letters and likely to face higher premiums. Nearly half are small entrepreneurs. Though highly vocal, most get their reinforcement watching Fox News, not MSNBC.

Even if Obamacare could be repealed after the next election, those victims could not get back their old policies.

Insurance companies, which benefit from the Affordable Care Act, have replaced those with much more profitable schemes.

Markets for health services and insurance are inherently local.

Obamacare reorganizes markets for individual insurance policies down to the county level in such a way that only one or a few companies serve many markets. Often, those insurers have not pressed providers to offer the same low prices as available in more competitive locations.

As the service providers become comfortable, padding costs and charging more, they will strongly resist new insurance companies entering their markets, seeking lower prices to charge lower premiums.

In many communities, for example, hospitals are run by a few private firms or a semi-public non-profit, and have substantial market power.

Overall, the U.S. spends a much higher percentage of GDP on health care than other industrialized countries, where nearly everyone is covered.

Even with Obamacare efforts to contain costs, projections by Medicare and Medicare actuaries – hardly a group with a political axe to grind – indicate this disparity will continue to increase.

European nations and Japan better contain costs, and many provide arguably more effective care, by recognizing that the market for health services is not a place where competition effectively contains costs. Germany sets prices for new drugs according to how much those improve treatment over existing medicines.

That system doesn't let Big Pharma drum up sales for new incontinence drugs by pushing old folks watching daytime TV to rush to CVS, then bill Medicare whatever it pleases.

Curbing market and patient manipulation is where the future lies.

Liberal Democrats see Obamacare as the road to paradise – socialized medicine like the British system – but the really effective systems, like those in Germany, rein in private prices, salaries and excessive staffing.

Regulation is painfully distasteful to conservative Republicans, but it would be a whole lot better than a National Health Service run like the Internal Revenue Service.

Reshaping Obamacare to bring down costs and premiums would capture voter loyalty more effectively than advocating the impossible – repealing the law altogether.

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This photo illustration shows a package of Plan B contraceptive.

BELIEFS

“The Supreme Court has never applied the Free Exercise Clause to find a substantial burden on a plaintiff’s religious exercise where the plaintiff is not himself required to take or forgo action that violates his religious beliefs, but is merely required to take action that might enable other people to do things that are at odds with the plaintiff’s religious beliefs,” federal court of appeals Judge Harry Edwards explained in an opinion last week.

CORPORATIONS AND FREEDOM OF RELIGION?

The contraceptive mandate is constitutional.

Can a corporation claim to have religious beliefs and if so, does it violate them to force the business to include contraceptive coverage in the health insurance it provides its employees? The federal courts of appeals are split on this question and it is almost sure to be heard and decided by the Supreme Court in the months ahead. There are fascinating legal questions, but the answer should be clear: requiring insurance coverage to pay for contraceptives does not violate the law.

The Patient Protection and Affordable Care Act required that the Department of Health and Human Services promulgate regulations to ensure that insurers provide coverage for preventative medical care. These regulations mandate that employers include in their insurance coverage payments for

the individuals who run it or own it. They cannot then claim that they want this distinct entity to operate by their religious beliefs.

Free exercise of religion is based on protecting an individual’s ability to follow his or her religious beliefs. But a corporation cannot have beliefs, religious or otherwise. In recent years, the court has accorded free speech rights to corporations, but in doing so it always has explained that this is because allowing more speech will further the underlying goal of the First Amendment of people being better informed. This has no application to the question of whether corporations can claim religious freedom.

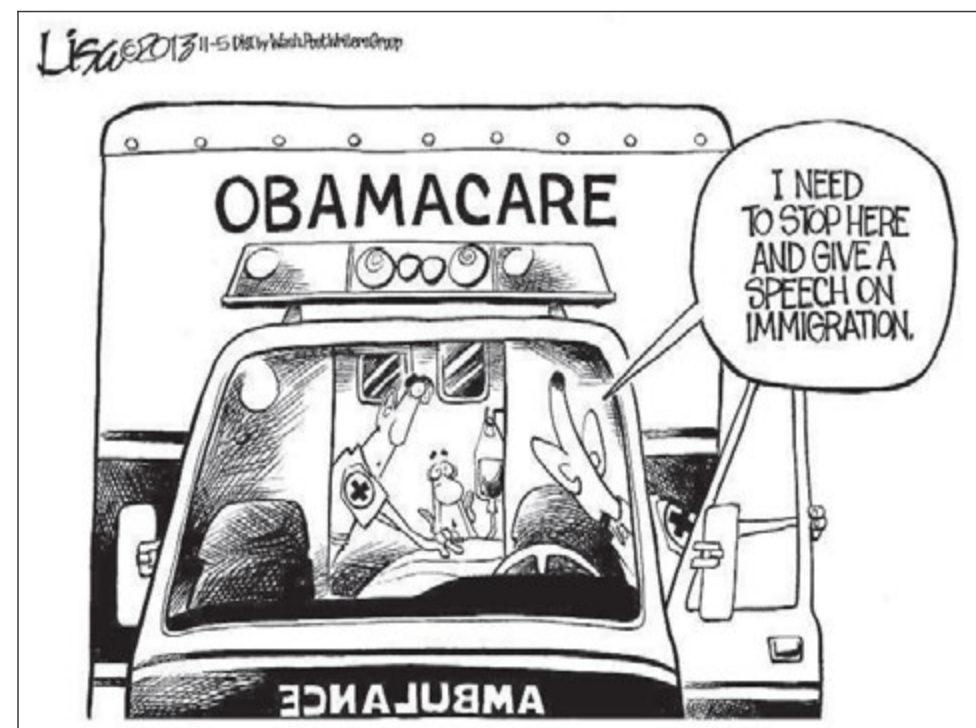
Moreover, even if corporations can claim to have religious beliefs, requiring that their insurance include coverage for contraception does not burden or violate their rights. The companies, and their owners and officers and directors, are not required to use or endorse contraception. In fact, they remain free to openly oppose the use of contraceptives. The federal regulations do nothing more than require that the company provide an insurance policy which includes coverage for contraception.

Even if corporations could claim free exercise of religion and even if the contraceptive mandate was seen as infringing it, the law still would be constitutional because it advances a fundamental constitutional right. For almost a half century, the Supreme Court has held that people have the fundamental right to control their reproductive autonomy. This includes the right to purchase and use contraceptives. The government has a compelling interest in helping to facilitate the ability of people, and especially women, to exercise this basic right of reproductive autonomy. The costs of contraceptives and the costs of an unwanted pregnancy fall disproportionately on women.

At this point, the federal courts of appeals are split on these questions. Like everything with the Affordable Care Act, the judges are divided along ideological and political lines. For example, the federal court of appeals in Washington, D.C. split 2-1, with the two judges appointed by Republicans voting to declare unconstitutional the mandate for insurance coverage, while the judge appointed by a Democratic president voted to uphold it.

Hopefully, though, the Supreme Court will transcend this and hold clearly and simply that the federal regulations are constitutional; corporations don't have religious freedom. Even if they do, the contraceptive mandate is constitutional.

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