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Recommended Citation

Johnston, L.D. 2014. "Hobby Lobby ruling: The crux of the problem is employer-provided health insurance." *MinnPost*, July 1, 2014. <https://www.minnpost.com/macro-micro-minnesota/2014/07/hobby-lobby-ruling-crx-problem-employer-provided-health-insurance>.

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MINNPOST

Hobby Lobby ruling: The crux of the problem is employer-provided health insurance

By [Louis D. Johnston](#) | 07/01/14



In

Courtesy of the Minnesota Historical Society

Employer-provided health insurance is a legacy of World War II.

Monday's *Burwell v. Hobby Lobby decision*, the U.S. Supreme Court ruled that closely held private companies are not required to provide contraceptive coverage in their employees' health insurance plans. The basis for the decision is the Religious Freedom Restoration Act of 1993, "which prohibits the "Government [from] substantially burden[ing] a person's exercise of religion even if the burden results from a rule of general applicability." The court once again applied the idea of a person to a company, in this case "closely held corporations" (to quote the decision).

I'll leave the person/corporation debate to the lawyers, political scientists, philosophers, and anyone else who wants to debate the point. Here, I want to focus on the crux of the problem: our employer-provided health-insurance system. In particular, the Supreme Court's decision makes it clear that America's experiment with employer-provided health care is a failure and that we need to move to either a single-payer system or a voucher system and remove employers from the health-insurance

business.



This, of course, leads to a question: How did we get in this mess to begin with? As usual in American public policy, it's a combination of historical accident and a chronic fear of centralized power.

The historical accident

Employer-provided health insurance is a legacy of World War II. **Melissa Thomasson**, an economic historian at Miami University, **writes**, "wage and price controls prevented employers from using wages to compete for scarce labor" but Congress wrote the legislation in such a way that it "permitted the adoption of employee insurance plans. In this way, health benefit

packages offered one means of securing workers."

After the war, two decisions cemented this arrangement. First, the National Labor Relations Board ruled that unions could bargain on behalf of their workers for benefits as well as wages. Second, the IRS in 1954 codified a wartime rule that "payments made by the employer directly to commercial insurance companies for group medical and hospitalization premiums of employees were not taxable as employee income."

Taken together, these two elements meant that management and labor could negotiate contracts that made trade-offs between taxable wages and non-taxable benefits as part of a complete compensation package. Once this arrangement was in place it spread rapidly through American industry.

Does this type of system make sense? Yes, it does in a system where men were the primary breadwinners and they stayed in their jobs for most of their work life.

But that's not the economy we have today. Men and women both participate in the paid labor force, and we want Americans to be flexible in terms of changing jobs and starting their own businesses. Health insurance should therefore be something that stays with individuals (and covers their children) and moves with them from job to job rather than something that ties them down.

The Affordable Care Act and incremental change

We've had numerous opportunities to change this system over the past 70 years but haven't done so. An important reason for this is that American public policy usually takes the form of gradual, incremental changes instead of radical, blue-sky transformations.

For example, consider central banking in the United States. Congress enacted the Federal Reserve Act in 1913, but instead of a single central bank it created 12 regional banks (e.g. the Federal Reserve Bank

of Minneapolis.) Legislators and their constituents were concerned that setting up one central bank would give too much power to Wall Street and felt that regional banks would both diffuse this power and give the Fed a more balanced view of the U.S. economy.

Unfortunately, this system failed to protect the banking system during the Great Depression, so Congress tried again via new legislation in 1935. But, rather than starting over and creating a new, centralized Federal Reserve, they took the existing 12-bank system and added a new layer on top of it, the Board of Governors of the Federal Reserve System. The regional banks lost their autonomy in monetary policy but retained much of their independence in terms of their day-to-day operation.

The Affordable Care Act did the same thing as the 1935 Banking Act. Members of Congress and Americans in general were concerned with “big government” solutions to our health-insurance problems and were equally wary of “big business” answers such as health maintenance organizations (HMOs). Instead, the Democrats tried to shore up the existing system of employer-provided health insurance with mandates, subsidies and other types of fixes instead of starting over with a clean slate — and Republicans said no to all of it.

Now what?

The Supreme Court’s majority opinion suggests that the government can provide contraceptive coverage via employer-provided health plans by adding another Rube Goldberg innovation by either having the government or health-insurance companies pay for this benefit.

There is a better way to do this: Take the employers out of the equation. We can do this in either of two ways. First, we could expand our existing single-payer system (Medicare) to all Americans and phase out Medicaid, along with the myriad other programs we’ve added atop the current employer-based arrangement. This could be financed by eliminating the Medicare portion of the Social Security payroll tax and instituting either a national value-added tax or a carbon tax (or a combination of the two).

Second, we could set up a **voucher system** funded by the federal government through general tax revenue (again, perhaps through a value-added or carbon tax) along the lines suggested by Ezekiel J. Emanuel and Victor R. Fuchs. Private insurance companies would compete to provide packages that meet federal standards and that individuals can afford to purchase using their vouchers.

The old saying, “If you find yourself in a hole, stop digging” applies here. Yes, we’ve fought over the Affordable Care Act and yes, it passed muster with the Supreme Court two years ago. But the court’s latest ruling only sets up another round of litigation that gets us no closer to what really matters for public policy: ensuring that all Americans have access to health care. Let’s acknowledge our mistake in not getting rid of the employer-based base for our health insurance and get on with building a new foundation that will serve us in the future.

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