

## Supremes Hear No Limiting Principle

Those who followed last week's Supreme Court arguments on President Obama's health care law got a primer in Constitutional Law. The scope of the three-day hearings was breathtaking. While legal issues dominated the conversation, economics also came into play. The question: Is the market for health insurance so unique that the federal government can penalize someone for not buying it.

This is no small matter. The federal government has never before required citizens to buy a private good or service. If the Federal Government could force people to buy something, as Justice Kennedy said, it would "fundamentally change the relationship between the individual and the government." If it can make us buy health insurance, what Constitutional principle prevents it from making us buy anything else?

The government argued that "not buying" health insurance foists costs on everyone else because the system ends up taking care of people anyway. In other words, those of us who do buy insurance end up paying more because others ride for free.

The problem is that this argument could be made about many types of activities. Eating broccoli can be good for you, not eating it could mean you are less healthy, which in turn foists costs on others. Everyone dies so everyone needs a burial plot or some other arrangement. Can the government force you to buy broccoli or burial plots?

The Obama Administration says that health insurance is different, and a mandate is Constitutional. But is there really a

natural barrier (a "limiting principle") that would prevent the government from going further down the mandate road?

From an economic point of view...no limiting principle exists. Every marketplace is governed by the laws of supply, demand and price. And these factors are determined by people who choose to "be in" or "not to be in" a particular market.

What about education? Could the federal government require all parents to buy prepaid college tuition for their kids? Many people don't save for their kids' education and then have their schooling subsidized (grants, subsidized loans, etc.) by those who do save, and who therefore pay full freight.

The advocates of the law say that everyone will eventually need health care, so making us buy insurance just changes the timing of the payment and prevents people without insurance from imposing costs on others. But, on average, those who would be forced to buy insurance by the new law are younger and healthier and therefore don't drive up costs anyway.

In the end, no limiting principle was articulated for the Court and our best guess is that the individual mandate and directly-related insurance provisions are stripped from the law. But, it also seems possible that the whole thing could get struck down because the mandate was so important to the law.

If the mandate is allowed, a 200+ year history of Constitutional limits on the economic power of the federal government is gone. For some, that would be like eating broccoli at every meal for the rest of our lives.

Date/Time (CST)	U.S. Economic Data	Consensus	First Trust	Actual	Previous
4-2 / 9:00 am	ISM Index - Mar	53.0	<b>52.2</b>	53.4	52.4
9:00 am	Construction Spending - Feb	+0.7%	<b>+0.8%</b>	-1.1%	-0.8%
4-3 / 9:00 am	Factory Orders - Feb	+1.5%	<b>+1.5%</b>		-1.0%
<i>sometime</i>	Domestic Auto Sales - Mar	5.6 Mil	<b>5.5 Mil</b>		5.7 Mil
<i>during the day</i>	Domestic Truck Sales - Mar	5.8 Mil	<b>5.8 Mil</b>		5.9 Mil
4-4 / 9:00 am	ISM Non-Man. - Mar	56.8	<b>57.9</b>		57.3
4-5 / 7:30 am	Initial Claims - Mar 31	356K	<b>360K</b>		359K
4-6 / 7:30 am	Non-Farm Payrolls - Mar	205K	<b>210K</b>		227K
7:30 am	Private Payrolls - Mar	222K	<b>223K</b>		233K
7:30 am	Manufacturing Payrolls - Mar	20K	<b>16K</b>		31K
7:30 am	Unemployment Rate - Mar	8.3%	<b>8.1%</b>		8.3%
7:30 am	Average Hourly Earnings - Mar	+0.2%	<b>+0.2%</b>		+0.1%
7:30 am	Average Weekly Hours - Mar	34.5	<b>34.5</b>		34.5
2:00 pm	Consumer Credit - Feb	\$12.0	<b>\$12.5 Bil</b>		\$17.8 Bil