

# OBAMA'S HEALTH CARE REFORM AND THE ECONOMIC PRINCIPLES OF A CONSTITUTIONAL ISSUE.

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## ABSTRACT

The main purpose of this article is to briefly describe the health care reform of Obama's administration and the most important features of the strong economic and political divisions in the U.S. society around the resulting law. The Patient Protection and Affordable Care Act (PPACA), very well known as "Obama Care", has been designed in a context of a very harsh debate about key principles of economic freedoms, between senators and representatives from the Republican and the Democratic parties. After the PPACA passed the Congress, different groups belonging to the Republican opposition filed a suit with the Supreme U.S. Court, criticizing the constitutionality of the law because it considers a universal compulsory health

insurance which, from their point of view, is against the key principles of freedom US constitution tries to preserve. During the three months that the Court took to communicate its final decision, the entire country experienced a remarkable ideological division, around the principles of economic freedom which were involved in the discussion of the law.

The final uphold of the PPACA by the Supreme Court, by the narrow difference of 3-2 votes, postponed the thriller to the presidential and parliamentary elections which were going to be 4 months later. Despite the fact of that a further analysis in this article, from influential opinions in the political world,

led us to conclude that -since a very long time ago- there have been significant levels of economic and political consensus around the principles considered under the PPACA.

**Keywords:** Obama's Health Care Reform

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## RESUMEN

El propósito fundamental de este artículo es describir brevemente la reforma a la salud del Gobierno de Obama y las principales características de las fuertes divisiones, tanto económicas como políticas, que se generaron en la sociedad de EE.UU. a consecuencia de la ley resultante. El Acta de Protección al Paciente y Cuidado de la Salud a Bajo Precio (PPACA), más conocida como "Obama Care", ha sido diseñada en un contexto de muy áspero debate acerca de principios claves de la libertad económica, entre senadores y diputados de los Partidos Republicano y Demócrata. Después que la PPACA fue aprobada por el Congreso, diferentes grupos pertenecientes a la oposición republicana presentaron una demanda a la Corte Suprema, criticando la constitucionalidad de la ley debido a que esta considera un seguro universal obligatorio de salud el cual, desde la opinión de ellos, está en contra de los principios claves de libertad que la Constitución de los EE.UU. busca preservar. Durante los 3 meses que la Corte demoró para comunicar su decisión final, la totalidad del país experimentó una notable división ideológica en torno a los principios de libertad económica que estaban involucrados en la discusión de la ley.

La ratificación final de la PPACA por parte de la Corte Suprema, por la estrecha diferencia de 3 votos a 2, postergó el suspenso para las elecciones presidenciales y parlamentarias que tendrían lugar 4 meses después. Sin embargo, un análisis más profundo, a través de este artículo, proveniente de opiniones influyentes en el mundo de la política, permite concluir que desde hace bastante tiempo ha habido un significativo nivel de consenso económico y político en torno a los principios considerados en la PPACA.

**Palabras Claves:** Reforma Salud de Obama

## ANALYTICAL CONTEXT

One of the significant features of the U.S. health care system is the lack of obligatory insurance. This situation has created a significant number of people –around 30 millions, especially the youngest- who voluntarily have never had an insurance contract. Simultaneously there is another group around 20 million people who don't have this type of contract and not because they wouldn't like it but they don't have enough money to pay for it. These people belong to the poverty levels or typically affected by preexisting problems. In this last case, as a consequence of their elderly or previous expensive health treatments they have been, in the practice, finally eliminated by the companies from the insurance system because of the expensiveness of their sickness. Their only one alternative to come back to the system would be paying a much more expensive premium than they previously had paid. When someone of this group has a sickness or disease they constitute, in the practice, a burden for the Medicare or Medicaid (both are from state health system), from which is easy to conclude that the most costly treatments are definitively funded by the state. But, beyond that, there is also a diagnosis of high consensus that the health care system in the U.S. as a whole –assessed in amounts per-capita- is significantly more expensive than the other developed countries. The U.S. spent in 2008 about \$ 7000 per capita on health care, which is the double of this expense in countries like Japan or the UK. (Meeker, Mary)

On December 24, 2009 the Patient Protection of an Affordable Care Act (PPACA) passed the Senate by a vote of 60–39 with all Democrats and two Independents voting for, and all Republicans voting against. It passed the House of Representatives on March 21, 2010, by a vote of 219–212, with 34 Democrats and all 178 Republicans voting against the bill. Obama's administration, as a consequence, had been successful fulfilling one of the key promises of his presidential

campaign which, for years, has been one of the most conflictive issues since the last Democratic administration of President Clinton was not able to achieve the support of the Congress trying to pass a bid like this.

If we try to address the issue from the easiest point of view for most of service users, the PPACA constitutes a very significant reform which considers as its most important pillars (insuranceproviders.com, 2011), firstly, the removal of preexisting condition clauses for all health insurance plans by 2014 (PPACA, Public Laws 111-148&111-152 Sec. 1101). Hence, from that date, patients cannot be dropped. The insurance companies will no longer end contracts because of the dearness of these patients' diseases. Secondly all the new health insurance will have to cover immunizations and preventive care (PPACA, Public Laws 111-148&111-152 Sec. 4001). This is one of the important measures to reduce the long term cost of health attention, because preventive treatments imply much lower cost, for the same insurance company and for the health system in general, than those required when diseases are a fait accompli. The third established change is that unmarried children can be dependants and they have the right to be covered under their parents' health insurance plan until the age of 26 (in the present is 23) (PPACA, Public Laws 111-148&111-152 Sec. 1502). But this last change is directly connected with the fourth, which has resulted in the most conflictive issue. It is the obligation, now on, to contract a health insurance for everybody who has a job. The only one exception would be those people who belong to the levels of poverty who are also going to be part of these contracts, but they will do it by the state, becoming part of the Medicaid System (PPACA, Public Laws 111-148&111-152 Secs. 1001 to 1105). Most of the 30 millions of people who will be incorporated as contributors, to this new health fund, are healthy people. Then the fund will

rise without significant increase in expenditures for costly health attentions. Furthermore the risk of any expensive disease will be shared among many more people and with much more disposable funds than the present. Hence as a consequence of this change, the individual cost of the health insurance will be reduced.

It is evident that this last component –well known as the “individual mandate”- is the financial cornerstone of this new “Obama Care” law, in spite of the fact that several conservative groups, mainly Republican governors (leaded by Florida, 13 other states have joined and the National Federation of Independent Business included four individuals), have filled a law suit to the Supreme Court criticizing this reform. From their point of view, the Central Government forcing people, by a law, to take out a health insurance would imply a

mandate against the key principles of freedom, in the U.S. Constitution. This suit in the highest court had its first hearing on the last March 27th. That time the 9 judges publicly assumed the compromise to emit their constitutional verdict in June. According to that, the verdict was officially announced the last 28 of June, by which with 5-4 votes the Court had decided to uphold the law. However by those 3 months, which the Court took for publishing its verdict, the situation was a real political thriller in the U.S. because it was at stake the future of the most important legislative initiative of Obama’s administration, which failure could have also implied very negative consequences about the president’s reelection.

In Section 1 we will analyze the key arguments of this debate.

## CONFRONTATION ABOUT PRINCIPLES OF ECONOMIC FREEDOM. Section 1

It is evident that the blurred President’s identity of leadership, as an incumbent candidate for November presidential elections, would have been difficult to surmount in the case that the Supreme Court had voted against the constitutionality of the PPACA last June. But what is unbelievable is that Obama would be defeated - in this case- by his Republican rival Mitt Romney who undertook a law, almost with the same key principles, when he was the governor of Massachusetts (“An Act Providing Access to Affordable, Quality, Accountable Health Care” enacted as Chapter 58 of the Acts of 2006 of the Massachusetts General Court).

Despite the fact that the PPACA finally passed both chambers of the Congress -being enacted on March 23, 2010- when Democrats were in the majority, the law was a result of a long process of negotiations which did not completely satisfy the liberals, but less yet to the conservatives. For example, Paul Krugman, a very well known liberal economist recently said: “The act -- known to its foes as Obama Care, and to the cognoscenti as Obama-Romney Care -- isn’t easy to love, since it’s very much a compromise, dictated by the perceived political need to change existing coverage and challenge entrenched interests as little as possible”(Krugman, July 2011). But the 27th of March hearing in the Supreme Court had created a pessimistic perception in most of the liberals. It is very well known that 4 of the judges are doctrinally conservatives, another 4 are liberals and Mr. Anthony Kennedy was very well known with a trajectory being the judge of the “swing vote”. Despite the fact of that Mr. Kennedy decided being part of the minority of 4 judges who rejected the Act. The startling event that the Chief Justice John Roberts voted in favor the Act,

joining to the other 4 very well known liberal judges, was the worst news for Republicans and also a really surprising blessing for Democrats.

Although it is not part of the purposes of this article a further analysis about the legal content of the discussion in the Court, it is very startling to witness how concentrated the debate has been in the markets analysis. When judge Antony Kennedy asked solicitor general Donald Virelli: “Can you identify any limits on the commerce clause?” “At various points in the oral arguments yesterday, justices raised the concern that if the government can require people to buy health insurance, it could also require people to buy any other good on the private market; specifically mentioned were broccoli and cell phones. It’s a slippery slope, the judges were saying. What principle could limit Congress’s power to make people buy things?” (The Economist. March, 2012). Despite the fact of that some controversy has been created about Virelli’s decision of avoiding a direct debate about this questioning stance of the judges, the final decision of the Court, upholding the law, could validate Virelli’s defense, who insisted about the experience of Massachusetts Reform: “Think about how much it would cost to get the insurance when you are at the hospital or at the doctor. It would be unfathomably high. That will never work. Congress understood that. It chose the means that will work, the means that it saw worked in the States and in the State of Massachusetts, and that it had every reason to think would work on a national basis“. (Lazarus, March 2012)

It is evident that the concept of freedom can always be present from different points of view. While the “Obama Care” or “Obama-Romney Care” aims to yield the opportunity to overcome the complete lack of freedom for sick people, which means staying without any chance –or total hindrance- to choose between being or not attended by the health care system. It is evident that there is also another point of view, whose aim is that the creation of this mandatory law should be considered as a threat to the market freedom. In

this type of situation when we have a clear confrontation of these two concepts of freedom, which of both should prevail? Previous to answer this question it is indispensable to know more about some key political and influential perceptions, especially around decision makers in the conservative world.

## THE HEALTH CARE ISSUE IN THE MODERATE CONSERVATIVE WORLD. Section 2

Despite the fact of the narrow Supreme Courts’ decision in favor the PPACA last June, there is an increasing consensus in the US that part of the PPACA’s reforms, at least, should be consider for a better future of the health care system. For example Ford C. O’Connell is a Republican strategist who worked on the 2008 McCain-Palin presidential campaign also being a chairman of Civic Forum PAC, an organization that promotes conservative activism. He has recently said in a CNN’s article “if Obama Care is rejected by the court, it would present a huge opportunity for Republicans. They could look like problem-solvers by coming up with a smart proposal that takes the best ideas from the other side. And if they can message it properly, they’ll be in a sweet spot”(O’Connell Ford, April 1st 2012). Although most of the political analysts, in that time, shared the common intuition that an Obama’s defeat –by a decision of the Supreme Court- in this key project of his presidential identity would have been insurmountable for him, as a candidate for the reelection; a republican analyst such as Mr. O’Connell disagreed with that perception. He said in the same article “if the law is overturned, we can count on the president to raise the issue on the campaign trail. It’s a reasonable strategy. Plus, ‘re-litigating’ the court

decision would be better for him than to run on issues such as unemployment rate, the state of the economy or the price of gas, which he hasn't handled well" (O'Connell Ford, April 2012).

The outstanding Indian-American, very well known journalist and commentator about politics and foreign affairs, Fareed Zakaria, recently said "I find that many of the most fervent critics of government involvement argue almost entirely from abstract theoretical propositions about free markets. One can and should reason from principles. But one must also reason from reality, from facts on the ground. And the fact is that about 20 foreign countries provide health care for their citizens in some way or other. All of them--including free-market havens like Switzerland and Taiwan--have found that they need to use an insurance or government-sponsored model. All of them provide universal health care at much, much lower costs than we do and with better results" (Zakaria, Fareed March 26 2012). For more than 10 years columnist of News Week, editor-at-large of Time magazine, Zakaria earned his Bachelor of Arts in Yale University where he was a very well known member of the "Party of the Right". Even though there are opinions that he has become a very moderate conservative. The American television journalist George Stephanopoulos said about Zakaria in 2003, "he's so well versed in politics, and he can't be pigeonholed. I can't be sure whenever I turn to him where he's going to be coming from or what he's going to say."

But as we have described in the previous pages, likely the most important conservative view about this issue is coming from the rival of President Obama for the next presidential election, Mitt Romney. Mr. Romney, as the Governor of Massachusetts, enacted in 2006 "the Act Providing Access to Affordable, Quality, Accountable Health Care" considering the same obligatory health insurance which has motivated conservative groups filing the lawsuit to the Supreme Court against the PPACA. The reform implemented in Massachusetts established an independent public authority, the

Commonwealth Health Insurance Connector Authority, also known as the Health Connector which acts as an insurance broker to offer private insurance plans to residents. The Act of this reform considers tax penalties on residents for failing to obtain an insurance plan and tax penalties on employers for failing to offer an insurance plan to employees (Boston: Massachusetts Health Connector. 2011-07-11). Obviously it was not going to be easy for Romney, as Obama's opponent in the next presidential campaign to advocate that the obligatory health insurance implemented in Massachusetts was adequate but that Obama's health care reform was not, because it considers the same type of obligatory insurance.

It was evident that beyond the end of the Supreme Court's decision the last June, the US health care system will be significantly reformed. Likely led by Democrats it will be more deeply transformed than by Republicans, but the high consensus about its weaknesses won't admit its permanence such as it is.

Despite the fact that one of the harshly criticized weaknesses of the US health care system has frequently been the high cost of patient attention; this key issue has not been part of the most sensitive discussion of this reform. This will be the subject of the Section 3.

## THE COSTLY HEALTH CARE SYSTEM FROM THE U.S. AND THE NECESSARY REFORMS. Section 3

It is very well known that the U.S. spends each year \$ 7500 per capita in its health system, achieving a 78 year life expectancy for its population. Developed countries such as Britain, Japan, Germany and South

Korea spend between 1500 and \$ 4500 per capita all of them achieving more than a 78 year life expectancy (Meeker, Mary. March 1st, 2012). Taking for granted similar considerations, Fareed Zakaria, the outstanding analyst of foreign policies, has remarked in a recent article (Zakaria, Fareed. Times Magazine 2012) that “the International Federation of Health Plans released a report comparing the prices in various countries of 23 medical services, from a routine checkup to an MRI to a dose of Lipitor. The U.S. had the highest costs in 22 of the 23 cases. An MRI costs \$1,080 here; it costs \$281 in France”(International Federation of Health Plans, 2010). What has happened to the efficiency of the US health care which is so expensive but with evidently worse results than its peers?

In a recent article of Todd Hixon in Times magazine, a well known financier of new technology companies, who works as investor in New Atlantic Ventures, has considered 4 key causes to explain this relative dearness of the U.S. health care system: (1) the high cost of the U.S. physicians; (2) significant differences in health care costs between U.S. regions; (3) pharmaceutical pricing; (4) highly-developed U.S. tort system and resulting defensive medicine. Quoting a research developed by Miriam Laugesen of the Columbia University School of Public Health and Sherry Gleid, an Assistant Secretary in the U.S. Department of Health and Human Services, Tod Hixon comments about number (1) “The biggest driver of the gap (compared with other developed countries) is spending with specialist doctors, which is 3-6 times higher in the U.S. versus peers. This difference is mainly due to much higher prices in the U.S., which are driven by both higher per-procedure rates paid by both public and private payers, and larger proportion of higher-paying private payers in the U.S. By comparison, public per visit rates for U.S. primary care doctors are at the high end of the range for peer countries and private rates are slightly above the range, and primary care doctor incomes are higher than peer countries, but less than half of the incomes of U.S. specialists.

Primary care doctor utilization is comparatively low in the U.S., which keeps overall spending on primary care down”(Hixon, Todd. March 1st, 2012)

The most important to consider about the number (2), the different regional costs, it is that if the entire country were brought to the spending level of the cheapest regions, the savings would be about \$750 per capita, \$225 billion. Furthermore the different health care indicators, from a Dartmouth University research, show that health outcomes are no better in the high spending than in the low spending regions (Hixon Todd, 2012). About the pharmaceutical pricing, number (3), McKinsey Global Institute estimates that this item could cost around \$50 billion to the U.S. health care system (about \$170 per capita) more than peer countries (Mc Kinsey Global Institute, December 2008) . In an article published a year ago by “The Economist”, the laboratories marketing is blamed as the main cause of this additional cost (The Economist, Jun 8th, 2011). The component number (4) is not as significant to the previously mentioned 3. Likely it means less than \$100 per capita (less than \$30 billion as total expense) but it has become increasingly significant in the last years and the defensive attitude of physicians could augment it in the future (Hixon Todd, 2012).

There is a high level of consensus that more regulation is the only one alternative to reduce the high cost of the US health care system, in all the different items we have described and others. Fareed Zakaria make his case about this subject in his recent article we have mentioned in the “Times” magazine saying: “for broader costs to decline, there is no alternative to having some kind of board that decides what is covered by insurance and what is not--as exists in every other advanced country. This has been demagogued as creating ‘death panels’ when it is really the only sensible way to make the system work” ((Zakaria, Fareed. Times Magazine 2012).

## KEY CONCLUSIONS ABOUT THE ISSUE OF OBAMA HEALTH CARE REFORM

The entire U.S. country experienced the last June a real thriller as a result of a pending resolution from the Supreme Court about the constitutionality of the PPACA (Patient Protection and Affordable Care Act) –the new health care law approved at the end of 2009 by the Congress-. A law suit has been filed by conservative groups, mainly republican governors, criticizing the PPACA because it considers a mandatory law of obligatory health insurance which, from their point of view, is against the key principles of freedom of the U.S. Constitution. Despite the fact that the law was upheld 3-2 by the Court and it is not a key motivation of this article to develop a further analysis from a legal point of view, there are around this legal decision very interesting definitions about principles of free markets and their regulations which were going to constitute a key precedent for the future. Especially in the case of the health market which has usually been working under important state regulations, but much more in other developed countries than in the U.S., such as is possible to conclude in the previous pages of this article. But from there it is also conclusive to take for granted that all these important economic principles are always institutionalized by political decisions. Although the Supreme Court is a State Power whose members have always tried to highlight their independency of political influences, in all democracies of the world, in this case the only decision of the Court against this mandate would have scuttled a financial cornerstone of the law. This decision would have meant the complete collapse of a symbolic project from Obama's administration and favoring the definitions about economic market freedoms, in the specific case of the health care system, coming from the conservative groups who had

filed the suit.

Without any doubt, the final approval of the law by the Court, including the conflictive mandate of obligatory insurance, will mean a significant historic transformation in the health care system of the U.S. The 30 million people who would be incorporated, by this new obligatory system, is a healthy group of the population who would contribute with a significant increase of the disposable funds to the health insurance system. But beyond that, this new group of insured would help to disperse the risk of expensive diseases among many more people, prompting a decrease in the individual cost of the health insurances, as a consequence.

Under this debate, a very especial restlessness about the principles of freedom has been shown by the U.S. institutions and the public opinion, at the same time. Once more, such as other experiences in human history, after a while, the freedoms debate will be unavoidably found in a crossroads where 2 or more types of freedoms are going to be in a conflict or contradiction. Is it right to consider it a freedom achievement, for the society, that 20 million people, who have never had the opportunity to opt to get health attention, from now on will accede to it because the PPACA has created the opportunity for them? The answer could be yes or no. But if the answer is yes, the next question would be: is it compatible with those principles of freedom, that the state regulates the health market creating a compulsory insurance for other people (the new 30 million, large majority of them healthy people) whose contribution will be decisive for proper access to health care to those 20 million? Liberals, in general, say yes to both questions, but conservatives say no in both cases. Something which is very evident is that U.S. politicians are very representative, about this issue, of the divided public opinion of the country.

However we could justifiably conclude that, watching the events in the world and in the same U.S., liberal principles could be much closer to the reality taking



into account, included, the recent attitude and opinions of historic conservatives. This is increasingly evident when we consider that one of the key conservative leaders -such as Mitt Romney- implemented a very significant health care reform in the state of Massachusetts, when he was the governor. As we have described in Section 3, this state law deemed exactly the same type of compulsory health care insurance which has been harshly criticized by the conservative group of plaintiffs who have filed the law suit with the Supreme U.S. Court, against the PPACA. As we know Romney has been a Republican presidential candidate, competing against President Obama for the reelection. The Republican strategist and chairman of Civic Forum PAC, Ford C. O'Connell, has called his GOP fellows -for this presidential campaign- to avoid a strong confrontational attitude against the PPACA trying to "look like problem-solvers by coming up with a smart proposal that takes the best ideas from the other side" (Oconnell, Ford C., April 2012). Fareed Zakaria, outstanding commentator of foreign affairs who belonged, as bachelor student in Yale University, to the "Party of the Right" recently said "the fact is that about 20 foreign countries provide health care for their citizens in some way or other. All of them--including free-market havens like Switzerland and Taiwan--have found that they need to use an insurance or government-sponsored model. All of them provide universal health care at much, much lower costs than we do and with better results" (Zakaria Fareed, 2012). This "government sponsored model" in all those countries has meant to develop market regulations, which have always implied implementing limits and restrictions of some type of freedom in the benefit of another which could be more valuable for the progress of the society. This was understood by same Mitt Romney, as Massachusetts governor, undertaking a very similar health care reform to the PPACA in that state. It was also understood by different authorities, from the beginning of the 20th century, when for the first time

in the state of Connecticut -in 1925- the compulsory car insurance was created.

Obama's administration has been blessed by the Supreme Court becoming, by the PPACA, the historic administration of the biggest health care reform. Despite the fact that the immediate reaction of Mitt Romney, after the Court upheld the PPACA, was to say that -as president- his first decision would be to derail the law, in the long struggle of the campaign he essentially limited himself to emphasize - in an opportunity with a strong debate with president Obama- that he would apply a Boucher for the Medicare System. But like O'connell has advised, Romney -in the general strategy of his campaign- has avoided a confrontational attitude against the whole of the PPACA.

The different opinions -including the moderate conservatives we have picked up in this article- and the most likely outlook of a presidency without support of the majority in one of the 2 chambers of the Congress, at least, creates a favorable stage for keeping a high level of consensus around the PPACA reforms. For the next years we will be witnesses of an increasing political consensus, which could mean a snapback of the key arguments -defending the principles of freedom- we have heard by the plaintiffs, against the PPACA law. That is the way of how suddenly the key orientations of the consensus can change in the national scene of politics.

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