Section I

There is no *constitutional* positive right to affordable health care.

Has Prof. Alan S. Blinder discovered nestled in the Constitution's constellation of negative rights a positive enforceable derivative right to affordable health care? It would seem that he thinks so. In his op-ed "Life, Liberty and the Pursuit of Insurance" in The Wall Street Journal (April 20), he writes: "...[O]ur country was founded on the idea that the rights to life, liberty and the pursuit of happiness are inalienable. Access to affordable health care is surely essential to two of these three rights, maybe to all three." If someone has an enforceable positive right to something, someone else must have an enforceable duty to provide it. "Rights are nice, but someone has to the pay the bills." His words. Who might that someone be? Congress in the exercise of its powers to tax and appropriate? The citizenry through the purchase of private health insurance? How is this newly-discovered positive right to be enforced in the real world? By equitable specific performance orders issuing from some Federal court? Not likely. There is an ancient inconvenient principle that remains firmly embedded to this day in the Anglo-American legal tradition, namely that Equity does nothing in vain. In other words, it will not issue decrees which it cannot be certain to enforce. Bottom line: There is no *constitutional* positive right to affordable health care**.** ***See*** **Charles E. Rounds, Jr. Letter to the Editor, WSJ, April 26, 2012, at A14**.

Section II

Obamacare and Social Security are not legally analogous

The U.S. Supreme Court in the 1937 case of Helvering v. Davis held that Social Security was constitutional under the Welfare Clause and the Tax Clause. Obamacare's insurance-purchase mandate, on the other hand, is being challenged as a violation of the Commerce Clause. Why, one might ask, is there a section on the legal structure of Social Security in Loring and Rounds: A Trustee's Handbook (2012), at pages 1334-1336? It is to make clear to its readers that the so-called social security trust fund is merely a euphemism for a welfare administration apparatus. Under 42 U.S.C.A. §401(c), no true trust is created, at least not of the type that is the subject of the Handbook. Social Security is just an umbrella term for two legally-unrelated and legally-independent programs, one involving welfare dispensation and the other involving the assessment and collection of a non-dedicated tax. All this was confirmed once and for all in the 1960 U.S. Supreme Court case of Flemming v. Nestor. The two legs of Social Security, of course, are politically joined at the hip, or at least they have been until relatively recently. On July 12, 2011, President Obama said he could not guarantee that retirees would receive their Social Security checks August 11, 2011 should Democrats and Republicans fail to reach an agreement on raising the debt ceiling. If nothing else, the President's pronouncement served as an official acknowledgement that Social Security "bonds" are a legal fiction without economic value, that the Social Security "trust fund" has always been unfunded. But what about the first paragraph of the lead front-page article in the April 24, 2012 edition of The Wall Street Journal which reads as follows: "Social Security, which pays retirement and disability benefits to 56 million Americans, will exhaust its reserves by

2033, three years sooner than previously estimated, a new government report said Monday"? Not true. Social Security has no segregated, dedicated entrusted "reserves." Again, this has been confirmed twice by the U.S. Supreme Court. See also Rounds, The Fiction of Social Security Bonds, http://www.mises.org/daily/1820. The recent report of the "trustees" perversely deems the Social Security "bonds" to have economic value. The year 2033 calculation is based on that unwarranted assumption. **See generally Loring and Rounds: A Trustee's Handbook §9.9.3 (2012).**