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Obama's feet of clay

It is not overstating the case to say that it will be cause for a national day of sorrow if the U.S. Supreme Court fails to strike down ObamaCare as a brazen and unconstitutional overreach by the metastasizing federal government. That is how serious a threat ObamaCare poses to our freedom as a people.

Justice Antonin Scalia was savaged by the left during hearings on ObamaCare when he pondered whether a Congress that can force Americans to buy government-approved medical insurance or be punished also can force us to buy broccoli.

To hear the big-government zealots tell it, it was as if Scalia had uttered an idea that no one would ever imagine to be permissible.

The trouble is, other people involved in the case also have suggested that a broccoli mandate might be allowed under our Constitution -- and they are hardly conservatives.

Consider a couple of inconvenient points made by Michael Tanner, a senior fellow at the Cato Institute.

"During oral arguments before the Court of Appeals for the District of Columbia Circuit on the constitutionality of Obamacare's health-insurance mandate," he writes, "the Obama administration's lawyer, Beth Brinkmann, was asked whether a federal law requiring all Americans to eat broccoli would be constitutional.

"It depends,' she replied. But she could certainly envision cases where it would be."

Tanner adds: "That makes [Brinkmann] only slightly less certain than Supreme Court Justice Elena Kagan, who was asked the same question during her confirmation hearings. Kagan, who will help decide the fate of Obamacare's mandate, had no doubts that a broccoli mandate would be constitutional."

So if the left thinks the notion that such a mandate could make its way into U.S. law is nonsense, it might want to rein in its own prominent legal figures who have, at a minimum, hinted that there is no constitutional principle to forbid such an encroachment on individual liberty.

And that brings us back to the painful controversy over ObamaCare's rule that religiously affiliated schools, charities and such must pay for employees' birth control coverage even if such coverage is a direct violation of the teachings of the faith to which the organizations are connected.

It is utterly irrelevant whether you happen to think Catholic views on contraception are correct. The First Amendment's guarantee of religious liberty is not up for a vote by Congress. Moreover, views and policies that win popularity contests do not generally require a lot of constitutional protection. It is as much for views on which there is sharp debate as for broadly accepted opinions that the protection of the First Amendment exists.

And yet as things stand now, ObamaCare represents a mortal threat to the invaluable and wide-ranging charitable work that Catholic institutions perform throughout the United States. If upheld, it will force them either to deny bedrock tenets of their faith or to shut down and lay off the very employees whose medical coverage is at issue in the first place.

But enough about ObamaCare's job-killing properties and the debate over birth control. Important as those issues are, they miss another key point.

The real problem is that the federal government is forcing a great many employers of all stripes to provide medical coverage or be fined. Beginning in 2014, companies that have more than 50 full-time employees must begin providing health insurance, or else they will be penalized annually to the tune of \$2,000 per full-time worker, excluding their first 30 workers.

It would be helpful if, for a change, supporters of ObamaCare would cite not just their personal, ill-defined notions of "fairness" but the so-far-undiscovered regions of the Constitution that grant Congress the right to dictate the benefits that employers must provide to employees. Under the 10th Amendment's clear restraints on federal power, that is not a matter over which Congress has authority. Rather, it is something to be worked out in our free market by mutual agreement between a company and its employees -- with workers retaining the right not to work for an employer who they believe offers inadequate benefits.

It is proper for Catholics and non-Catholics alike to be outraged by ObamaCare's all-out assault on Catholic schools' and charities' right not to violate their teachings and their conscience.

But it is equally proper for all Americans to challenge the unbounded growth of the size and power of the federal government. If ObamaCare is not struck down, it is almost impossible to imagine that any meaningful limits will remain on Washington's role in all our lives.

As U.S. Rep. Pete Stark, D-Calif., casually stated in a moment of candor in response to a person who questioned whether health care is a "right": "I think that there are very few constitutional limits that would prevent the federal government from rules that could affect your private life. ... The federal government, yes, can do most anything in this country."

Constitutionally speaking, he is dead wrong. But he merely put into words what too many members of Congress, as well as the president, plainly believe: that Washington is entitled to do what it pleases.