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A quick reading of Judge Henry Hudson's opinion today striking the "individual mandate" provision of ObamaCare gives hope to those of us who have long urged, more broadly, for a restoration of limited constitutional government. As Judge Hudson put in granting summary judgment to Virginia, "the legislative process must still operate within constitutional bounds."

The administration had argued that Congress had authority to enact and enforce the individual mandate to buy health insurance under its power to regulate interstate commerce. But Judge Hudson responded that "Neither the Supreme Court nor any federal circuit court of appeals has extended Commerce Clause powers to compel an individual to involuntarily enter the stream of commerce by purchasing a commodity in the private market."

Indeed, he noted, the administration's reasoning could apply to "transportation, housing, or nutritional decisions. This broad definition of economic activity [to include inactivity] subject to congressional regulation lacks logical limitation." The federal government remains, in short, one of delegated, enumerated, and thus limited powers, notwithstanding the leviathan that surrounds us today..

This is a significant setback for the administration, not least because Judge Hudson cites to a similar argument set forth by federal district Judge Roger Vinson in Vinson's Oct. 14 opinion denying the administration's motion to dismiss the ObamaCare suit brought against it by 21 states, with more to follow. There will be more litigation on these issues, of course, but for today, at least, the Tenth Amendment and the limited government it implies are alive and well.