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## In Obamacare's 1st Legal Battle, Liberty Wins

Posted By [admin](#) On August 5, 2010 @ 3:18 pm In [The Scoop](#) | [5 Comments](#)

**By Ilya Shapiro**

**Texas Insider Report: Washington, D.C.** – Judge Henry Hudson of the Eastern District of Virginia denied the government's motion to dismiss Virginia's legal challenge to Obamacare. Notably, Judge Hudson agreed the federal government's assertion of Commerce Clause authority for the individual mandate is unprecedented:

The guiding precedent is informative, but inconclusive. Never before has the Commerce Clause and Necessary and Proper Clause been extended this far. At this juncture, the court is not persuaded that the Secretary has demonstrated a failure to state a cause of action with respect to the Commerce Clause element.

And that goes for the government's arguments generally:

While this case raises a host of complex constitutional issues, all seem to distill to the single question of whether or not Congress has the power to regulate—and tax—a citizen's decision not to participate in interstate commerce.

Neither the U.S. Supreme Court nor any circuit court of appeals has squarely addressed this issue. No reported case from any federal appellate court has extended the Commerce Clause or Tax Clause to include the regulation of a person's decision not to purchase a product, notwithstanding its effect on interstate commerce.

Give the presence of some authority arguably supporting the theory underlying each side's position, this Court cannot conclude at this time stage that the Complaint fails to state a cause of action.

In other words, at this first, early stage of litigation, Virginia's lawsuit survives and the government has a real fight on its hands.

Now, this ruling does not decide the merits of the case and is not binding on any other court in any of the other Obamacare lawsuits — on Friday, for instance, Florida is due to file its brief opposing the government's motion to dismiss the 20-state suit — but it is a beachhead in the fight against big government. Judge Hudson's opinion should finally silence those who maintain that the legal challenges to Obamacare are frivolous political ploys or sour grapes.

The constitutional defects in the healthcare "reform" are very real and quite serious. Never before has the government claimed the authority to force every man, woman, and child to buy a particular product – and indeed such authority does not exist.

I look forward to further favorable rulings as the various lawsuits progress.

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