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## Boehner Brings Suit Against Obama Regarding Employer-Mandate Delays

On Wednesday, July 30, House Speaker John Boehner (R-OH) moved to bring suit against President Barack Obama regarding employer-mandate delays as they pertain to the Affordable Care Act. The House voted along party lines 225-201 to move forward with the lawsuit, which authorizes Speaker Boehner to take legal action against the president.

Under the mandate, businesses employing more than 50 workers must provide health care coverage, or pay fines of \$2,000 per employee. This mandate was initially supposed to go into effect early this year, but was delayed until 2015. In February, the administration stated that companies employing between 50 and 100 full-time employees will not need to comply until 2016. However, unlike many other administrative rollouts, the statute explicitly stated that the mandate “shall apply to months beginning after December 31, 2013.”

Boehner’s suit targets what is perceived as skirting of a statutorily prescribed mandate. As Boehner recently noted, “Rather than provide relief to all Americans, the president circumvented Congress and made his own, new law. The President of the United States doesn’t have the authority under the Constitution to do that.” In an effort to downplay political outcry, Boehner also highlighted, “This isn’t about Republicans versus Democrats; it’s about the legislative branch versus the executive branch, and above all protecting the Constitution. The current president believes he has the power to make his own laws—at times even boasting about it.”

However, critics are arguing that the administration’s actions have been perfectly reasonable in this case, and are, according to Simon Lazarus, senior counsel to the Constitutional Accountability Center, “exactly what all administrations do—or should do—when they are implementing very complicated, big new laws.” In addition, on a political level, critics take delight in showcasing the irony of Boehner wanting to bring suit to *enforce* a mandate that he and other House Republicans are *against* in the first place.

The viability of the suit itself is also up for serious debate, due to prevailing legal doctrines affecting its strength from the outset. Standing is Boehner’s first substantial hurdle, and requires that the plaintiff seek redress for a particular injury. Some critics question how, if at all, Boehner and other House Republicans were “harmed” by the delay. Even if standing is granted, another question faced early in the litigation would concern the political question doctrine, which generally refers to the tendency of courts to shy away from “taking sides” in political battles between the executive and legislative branches. After all, as Case Western Reserve University professor of law Jonathan Adler recently noted, “We don’t want to replace the political process with litigation.”

Even if standing is granted as a legitimate lawsuit rather than political theater, both critics on the left and right have dubbed the suit a political stunt. But what if Boehner wins?

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On a practical level, very likely nothing. Walter Dellinger, a former acting solicitor general, testified last month that the case would likely not even be able to be heard by the Supreme Court until at least early 2016, which means the earliest ruling would be in June 2016. By that point, presuming no additional substantial delays, the mandate would already be in effect, with this subsequent ruling on its limitation bearing little significance. However, some believe that a victory would, on a longer-term basis, have profound impacts on the future of the separation of powers. Tara Grove, a separation of powers expert at the College of William and Mary law school, recently said that in the wake of potential victory in this case, “virtually any dispute between Congress and the president could wind up in court.”

Links to the official documents can be found below.

- [Resolution](#)
- [Key Points: House Litigation Against Executive Overreach](#)

*This document is intended to provide you with general information regarding the pending lawsuit against President Obama. The contents of this document are not intended to provide specific legal advice. If you have any questions about the contents of this document or if you need legal advice as to an issue, please contact the attorney listed or your regular Brownstein Hyatt Farber Schreck, LLP attorney. This communication may be considered advertising in some jurisdictions.*

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