

Expert: Boehner is out-of-bounds with suit against Obama

By Kent Covington & Lynde Langdon
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Next week, House Republicans will start work on legislation to authorize a lawsuit against the president for overstepping his executive powers.

“In my view, the president has not faithfully executed the laws,” said House Speaker John Boehner, R-Ohio, who is leading the effort.

In 2011, the president ordered the Justice Department not to enforce the Defense of Marriage Act. He also unilaterally deferred deportation of some illegal immigrants, raised the minimum wage for federal contractors, and made dozens of changes to the Affordable Care Act on his own.

The president’s actions present a real problem, said Roger Pilon, vice president for legal affairs at the Cato Institute. But he questions whether Boehner’s proposed lawsuit is the best solution.

“It seems to me that there are three insurmountable problems with that [idea],” Pilon said. “No. 1, the House just doesn’t have standing to sue the president on something like this. Secondly, it doesn’t have authority to do so. And thirdly, there’s no remedy that a court can issue that is remotely appropriate for a situation like this. This is a political issue.”

The Supreme Court recently ruled President Barack Obama misused his executive authority in making appointments to agencies during an unofficial congressional break. That judicial admonition followed a lawsuit a private company filed against the government.

“The recess appointments case arose because a private citizen, in particular, a company in this case, had an injury or a claim lodged against it by the National Labor Relations Board,” Pilon explained. “It brought suit as a private party to say that the National Labor

Relations Board was unconstitutionally constituted by virtue of the appointments that were made by Obama.”

But the situation is different in Boehner’s potential suit against Obama, Pilon said: “We limit the court to hearing cases or controversies whereby you’ve got parties before the court who purport to have been injured by something that the government has done. That’s not the case here. What you’ve got is a struggle between the two political branches. The court will, in all likelihood, say this is a political question.”

No legal precedent exists, Pilon said, for what Boehner is trying to do—except possibly the precedent of using threats to make a political point.

“There are some things that Congress can do,” Pilon said. “It can hold hearings, it can withhold funds, and, finally, it can impeach the president. He is failing to see that the laws be faithfully executed to such an extent that it calls for impeachment. Those are the main powers that the Congress has in a situation of this kind.” But so far, Republicans in Congress haven’t indicated they are willing to use those powers, yet.