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The Conservative Plot To Torpedo The Iran Deal In The Courts Has Begun

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House Speaker John Boehner (R-Ohio) seems open to the idea of a legal challenge to the Iran nuclear deal, calling it "[an option that is very possible](#)" on Thursday. Frankly, that would have sounded far-fetched at the beginning of the week.

But Boehner might have a shot now, thanks to a [federal judge's ruling](#) on Wednesday.

To the surprise of many legal observers, U.S. District Judge Rosemary Collyer [held](#) that the House has legal "[standing](#)" to sue the president over certain funding provisions of the Affordable Care Act.

Collyer's ruling addresses an issue of procedure. All it means is that the Obamacare lawsuit won't be dismissed, and [given the stakes in the case](#), the procedural ruling could yet face Supreme Court review. But the precedent the decision sets matters because, in essence, it gives Congress a legal avenue to bring future suits against the president over executive actions it disagrees with.

One legal scholar who writes for the influential Volokh Conspiracy blog is already plotting how the judge's ruling might help sustain an attack on the Iran deal -- not in Congress, but in a federal courtroom.

[Calling it a "landmark" decision](#), Northwestern law professor Eugene Kontorovich wrote Thursday that the ruling "creates a major and previously unanticipated opening for a congressional lawsuit" against the nuclear agreement.

Kontorovich cabins his enthusiasm by conceding that Congress' standing to sue the president is a "fairly novel" question of law. But he goes ahead and makes his case anyway, arguing that the [compromise legislation](#) that gave Congress 60 days to review the Iran deal provides the grounds for a constitutional showdown.

Kontorovich basically argues that the upcoming sanctions relief for Iran, which is provided under the agreement, will be unlawful because the president has not actually met the requirements of the 60-day review period (read more about the House's noncompliance argument [here](#)). That noncompliance, in turn, creates an injury to which Congress can point in suing the president.

South Texas College of Law professor Josh Blackman -- who advises the libertarian Cato Institute and has in the past opposed other executive actions by the Obama administration -- [responded to Kontorovich](#) with some serious constitutional speculation.

The White House, of course, says the president has met the review requirements. But Blackman asked what if Congress rejected the president's interpretation of those requirements, a power the law ostensibly gives to Congress and something that the House, at least, might do. Blackman argued it would be "much harder to side with the Executive in a sphere where the Congress has exclusive authority."

In that case, a lawsuit might just do the trick of telling Obama who is in charge.

Not every conservative commentator agrees.

"Conservatives who are banking on the courts however are repeating the mistakes of Obamacare -- counting on the courts as the deus ex machina when they have lost a political battle in the legislative and executive branches," [wrote Jennifer Rubin](#), a lawyer and blogger at The Washington Post.

All of this is merely an academic exercise for now. Until a few days ago, the very idea that Congress could sue the president like this was [only the stuff of legal thinkers](#).

But Collyer's ruling on Wednesday broke new ground, and the fact that legal academics are taking it seriously could mean Boehner might take it seriously. The judge's claim that her decision "will open no floodgates" of future congressional litigation doesn't bar action by someone who truly believes a lawsuit over the Iran deal is worth a shot.

Lest we forget, it was serious law professors like Blackman and others at the Volokh Conspiracy who argued that the last serious Obamacare challenge stood a chance in the courts. *King v. Burwell* [ultimately failed](#), but it took the justices to stop it.