

Boehner Stands Up

The House will sue the President for trampling the separation of powers

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All due credit to [John Boehner](#), who told his House colleagues on Wednesday that the institution will sue the executive branch to defend the Constitution's separation of powers. The Speaker is showing more care that the laws be faithfully executed than is President Obama.

In a memo to the House, Mr. Boehner detailed the institutional injury Congress is suffering amid Mr. Obama's "aggressive unilateralism," which is as good a description as any of his governing philosophy. When the executive suspends or rewrites laws across health care, drugs, immigration and so much else, elected legislators are stripped of their constitutional role.



House Speaker John Boehner of Ohio *Associated Press*

The Beltway press is portraying Mr. Boehner as merely serving carrion to the tea party vultures, and no doubt he hopes in part to sate the political appetites of the backbench. But we doubt he'd wager the House's reputation, and his own, on a novelty lawsuit that the courts wouldn't hesitate to toss as frivolous. From what we know of the Speaker's deliberations, he's been persuaded on the merits.

We'd prefer that Congress and President resolve their disputes through the normal political rough and tumble. The Constitution anticipates that the two ends of Pennsylvania Avenue will be in tension as they balance each other's power. But the major reason to involve the judiciary in this case is Mr. Obama's flagrant contempt for regular political order. For example, he has unilaterally revised, delayed or reinterpreted [ObamaCare](#) no fewer than 38 times.

Far from a partisan caper, this implicates the foundation of the U.S. political architecture. The courts generally presume that individual Members of Congress lack the "standing" to make a legal challenge, but Mr. Obama is stealing inherent Article I powers that no party other than Congress can vindicate. Mr. Boehner said he will seek a House vote

authorizing the lawsuit and put it under the direction of the Bipartisan Legal Advisory Group.

Constitutional litigator David Rivkin and Florida International University law professor Elizabeth Foley, who devised the theory that Congress has the institutional standing to sue the President, are thus asking a constitutional question that hasn't been joined at the courts. We [first encouraged such a lawsuit in an editorial](#) seven weeks ago.

More than a few judges and Supreme Court Justices seem to be concerned that Mr. Obama's conduct is undermining the rule of law and political accountability. Already this week the Supreme Court whaled the Environmental Protection Agency for defying the plain language of the law in the name of anticarbon policy, and more rebukes may be coming in the next week on recess appointments and ObamaCare's contraception mandate.

This is the President, after all, who last summer proclaimed that "in a normal political environment" he'd ask Congress to fix laws such as [ObamaCare](#), but since the House disagrees with his priorities he'll go ahead and "tweak" statutes himself without legislative consent. Thanks to Mr. Boehner, the courts will get a chance to weigh in on whether Mr. Obama, or his successors, can exercise such imperial powers.