

## Boehner plans to file lawsuit against Obama over use of executive orders



BY PAUL KANE: June 25, 2014

House Speaker John A. Boehner (R-Ohio) announced Wednesday that he intended to initiate a federal lawsuit seeking to declare President Obama's executive orders as an unconstitutional power grab by one branch of the government.

Boehner declined to spell out which actions would be addressed in the suit. Obama made an executive decision in 2012 not to deport children of illegal immigrants, and this month he issued an order to allow the Environmental Protection Agency to regulate carbon emissions from power plants. Those executive orders came after the Republican-controlled House and Democrat-controlled Senate deadlocked on these issues over the past few years, taking no action.

Republicans have argued that the president does not have the authority to issue such orders given that Congress has not supported them. "In my view, the president has not faithfully executed the law," Boehner told reporters at his weekly briefing.

Speaking to reporters before Boehner confirmed the plans for the suit, House Minority Leader Nancy Pelosi (D-Calif.) labeled it "a subterfuge" meant to distract from other issues. At the White House, press secretary Josh Earnest said the lawsuit fit with a congressional Republican plan of obstructing the president's agenda.

"The fact that they are considering a taxpayer-funded lawsuit against the president of the United States for doing his job is the kind of step that most Americans wouldn't support," he said.

Later, Boehner sent a two-page memo to all lawmakers explaining his rationale and the steps that would take place, singling out the issue areas of health care, energy, foreign policy and education. The legal grounding for the suit has recently been advocated by two conservative scholars, David Rivkin, a Washington lawyer, and Elizabeth Price Foley, a law professor at Florida International University. Their views were highlighted in an op-ed column by The Washington Post's George Will.

Democratic legal experts rejected this reasoning and suggested that Obama is following a long tradition of taking executive actions. "Under our system of separation of powers, the President has the duty to faithfully execute the law, and that is precisely what the Administration has done, while working within the law and the Constitution to act where the House has refused to do so," Rep. Adam B. Schiff (D-Calif.), a former federal prosecutor, said in a statement.

Next month, Boehner is set to convene a five-member team of House leaders — three Republicans and two Democrats — that will approve the precise language of the lawsuit and then bring it to the House floor for a vote affirming the decision.

The result probably would be a highly partisan vote.

The contours of the lawsuit probably will follow Boehner's decision three years ago to hire outside legal counsel to defend the constitutionality of the Defense of Marriage Act, which the Obama administration decided not to defend during the landmark same-sex marriage case that eventually went to the Supreme Court. In that case, also over objections from Pelosi, Boehner and House Republicans spent \$3 million paying a legal team led by Paul Clement, a former solicitor general and top conservative lawyer for federal appellate cases.

The lawsuit probably will take several years to wind through the federal courts, making it probable that it might have more impact on the executive authority of Obama's successor. However, Boehner said that he felt Congress was losing too much ground in the ongoing battles between the executive and legislative branches.

Some legal experts have suggested that impeachment is the only redress the House has for correcting what it views as lawless behavior by a president, but Rivkin and Foley contend that the federal courts can resolve this dispute without such a showdown.

The speaker emphatically rejected any notion of impeachment.

"This is about defending the institution," Boehner said about Congress.

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