

The House passed a [resolution](#) Wednesday authorizing Speaker Boehner to file suit on its behalf. A resulting suit is unlikely to succeed for a host of reasons, including the dubious legal standing of the House to bring such a case. But if it does succeed, this kind of mechanism could have real benefits at some future time when a Democratic Congress is facing a Republican Administration reluctant to enforce environmental laws. Indeed, the Resolution is impressively broad and open-ended. The press has portrayed the House resolution as limited to claims that Obama has violated the Constitution by delaying the employer mandate. But actually the Speaker has much more leeway than that. He can file repeated law suits on a wide range of subjects, against any official from Obama down to an orderly at a federal hospital, based on statutory violations as well as constitutional ones.

**What subjects are covered?** The Resolution authorizes suits involving:

- (1) any provision of the Health Care Act, not just the employer mandate — and the statute includes provisions on issues apart from Obamacare such as digitalizing medical records;
- (2) Any [provision](#) of Title I or subtitle B of title II of the Health Care and Education Reconciliation Act of 2010. Title I covers health insurance, Medicare and Medicaid, and subtitle B of title Title II covers several issues, including funding for community mental health centers.
- (3) “Any related law.”

Put these together and it appears that any federal program dealing in any way with health care is at least arguably covered.

**Who can be sued under this Resolution?** Basically, anyone getting a federal pay check, right down to the person who empties the wastebaskets in HHS. Coverage includes: “the President, the head of any department or agency, or any other officer or employee of the executive branch.”

**What's the time span?** The Resolution does not merely authorize a single suit. It authorizes the Speaker to file “one or more civil actions.” Nor is there any time limit stated in the Resolution to this authority: at least by its terms, this is a permanent augmentation of the Speaker's powers, though it might need a pro forma renewal at the beginning of each session.

**What kinds of legal claims?** Pretty much everything: failure “to act in a manner

consistent with that official's duties under the Constitution and laws of the United States", "including a failure to implement any such provision." So basically, any legal issue that could be raised against a federal employee or agency by anyone at all can also be the subject of a lawsuit by the Speaker, so long as the issue relates to healthcare.

Like the large majority of legal scholars, I don't expect the courts to entertain these lawsuits. But turnabout is fair play, and there's something appealing about using this precedent for a future Speaker Pelosi suing a future President Bush for failing to enforce environmental laws to the hilt. On the other hand, the very breadth of this law may make courts think twice about making inter-branch litigation the new normal. [Note: thanks to Dean Rowan for tracking down the language of the Resolution for me.]