Committee on Rules

U.S. House of Representatives

H-312 The Capitol
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June 24, 2014

Prepared Opening Statement of Ranking Member Louise M. Slaughter Offered During the Rules Committee Markup on H. Res. 676, Providing for authority to initiate litigation for actions by the President or other executive branch officials inconsistent with their duties under the Constitution of the United States.

Thank you, Mr. Chairman.

Amid the flurry of rulings surrounding the Affordable Care Act this week, one in particular is relevant to this lawsuit before us.

On Monday, Federal Judge William C. Griesbach (GRAISE-back) of Wisconsin dismissed a case brought by U. S. Senator Ron Johnson regarding how members of Congress and their staffs would get healthcare. Senator Johnson's allegation was that the Office of Personnel Management incorrectly applied the law. Judge Griesbach would not hear the case because of a lack of standing.

He wrote, "Under our constitutional design, in the absence of a concrete injury to a party that can be redressed by the courts, disputes between the executive and legislative branches over the exercise of their respective powers are to be ***resolved through the political process, not by decisions issued by federal judges***." He is exactly right, and two hundred plus years of Supreme Court precedent agree.

It was this Senator Johnson case that was almost identical to the suit you want to bring against the President. In both cases, it is some part of Congress asking a judge to second-guess the precise way the Executive Branch has exercised its constitutional power to carry out the law. Senator Johnson's case had the same weakness as Speaker Boehner's – there's no injury. This week, in *Halbig v. Burwell,* a three-judge panel from the D.C. Circuit struck down federal subsidies for the 7.1 million people who signed up on the federal marketplace because their states did not set up their own exchanges. I don't agree with this ruling, but the reason it even got a full trial was that Ms. Halbig was a private plaintiff who claimed she had suffered a concrete injury. Senator Johnson was not a private plaintiff, and neither are we. And it is not relevant that he is a single Senator and we are one chamber of the Congress, according to precedent.

Justice Scalia agrees with our explanation of why this lawsuit has no basis in precedent. In *Windsor v. United States,* Justice Scalia wrote that the framers of the Constitution emphatically rejected a, quote, "system in which Congress and the Executive can pop immediately into court, in their institutional capacity, whenever the President...implements a law in a manner that is not to Congress's liking."

In fact, the Majority's own witness at last week's hearing, Ms. Elizabeth Price Foley, had previously argued in an op-ed that the President's delay of the employer mandate "cannot be challenged in court" by Congress or anyone else.

Former Acting Solicitor General, Mr. Walter Dellinger, who was a witness for the Minority last week, told me a very straightforward way to explain Congressional standing. He said to me, "If Congress votes every farmer a potato, and the president declines to give one of the farmers a potato, the farmer has an injury and can sue. But

we have never had a system where *Congress* gets to sue *the president* for failing to give that farmer a potato."

I hope that's a clear enough explanation of why this lawsuit is without a foundation in any court precedent, but if the Majority insists on proceeding with this political exercise, the least they can do is amend this resolution to ensure accountability and transparency.

The American people deserve to know how much money will be spent on this political maneuver. We have asked the Majority to give us an estimate of how much this extravaganza will cost the taxpayers and what they've said is this, quote, "a lawsuit...is a small price to pay."

Similar lawsuits have cost *millions*. Remember that the Majority's legal efforts in support of the discriminatory Defense of Marriage Act cost the American taxpayers **$2.3 million.**

Millions are certainly not, "a small price," and for those seeking to dismantle the Affordable Care Act, they will add it to their long list of wasteful spending.

The Majority will waste seemingly limitless time and money keeping people from having healthcare.

The Majority orchestrated a government shutdown that cost the economy $24 billion dollars; they have held more than 50 votes to repeal or undermine the Affordable Care Act, which has cost $79 million; to investigate the non-existent Benghazi scandal, there have been more than 13 hearings, 50 briefings, 25,000 pages of documents produced, and the Majority came up with nothing. And even after they found nothing, they created the Select Committee on Benghazi and gave them a $3.3 million budget.

By the end of this week, they will have passed unpaid for tax cuts out of this House amounting to $700 billion, and will increase to $800 billion after present committee action, every dollar of which, is unpaid for. And now they have brought this "small price to pay" of a lawsuit that will surely cost millions.

This waste is so catastrophic. We are squandering time, money, and resources. We could be building roads, fixing bridges, or investing in high speed rail. Instead, the Majority is continuing their pattern of waste.

Our amendments will do three things: first, address the purely political nature of this exercise; second, highlight the outrageous and seemingly unlimited cost to taxpayers, including where the Majority intends to get the money to fund this effort; and third, focus on the trade-offs: the issues we should be working on instead of this hollow pursuit, like immigration reform, infrastructure development, and raising the minimum wage.

If this lawsuit is successful, it will upset the delicate balance in our separation of powers that has served this country well for over 200 years. Instead of Congress using the powers it was given by the Constitution to hold the executive in check, Congress will turn over its power to the courts to defend us every time we have a disagreement with the President. And my prediction is, the President will do the same whenever he doesn't like how we are doing our job.

This will not only lead to the atrophy of our legislative and oversight powers, but an aggrandizement of the courts – who will become the arbiter of every conflict between Congress and the President. It will be a very sad day for our constitutional system if the House continues with this civil action.

Mr. Chairman, I yield back.