

Legal Sidebar

District Court Holds House has Standing to Pursue Portions of ACA Lawsuit

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A number of lower courts have previously held that a single house of Congress has [standing](#) to enforce a subpoena through a civil lawsuit when that lawsuit is authorized by resolution and seeks to vindicate the institution's oversight powers. [Rarely](#), however, has the House or Senate been accorded standing to sue the executive branch in a claim arising outside of the subpoena enforcement context. [U.S. House of Representatives v. Burwell](#) represents just such a case. In a decision that may have a significant impact on the balance of power between the executive and legislative branches, the U.S. District Court for D.C. has held that the House *has standing* to challenge expenditures of funds made without an appropriation from Congress in violation of the Constitution's [command](#) that "No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law," but *does not have standing* to challenge the Administration's implementation, interpretation, or execution of statutory provisions. In short, the decision both extends and limits the ability of the House to unilaterally sue the executive branch.

In *Burwell*, the House made two basic claims relating to its contention that executive branch officials had failed to act consistently with their duties under the Constitution or federal law in implementing the Patient Protection and Affordable Care Act (ACA). First, that the Administration had violated Article I, § 9 of the Constitution by paying [cost-sharing subsidies](#) to insurers in the exchanges established under the ACA without a valid appropriation of funds by Congress for those purposes, and second, that the Administration had violated the [ACA](#), as well as the Constitution, by delaying enforcement of the [employer mandate](#). The chief threshold question for the district court was whether the House had standing to bring these claims. The doctrine of standing is a mix of [constitutional requirements](#), derived from the [case or controversy provision in Article III](#), and [prudential considerations](#), which are judicially created. The constitutionally based elements require that plaintiffs have suffered a personal injury-in-fact, which is actual, imminent, concrete and particularized. The injury must also be fairly traceable to the defendant's conduct and likely to be redressed by the relief requested from the court. The failure to satisfy these standing requirements is fatal to the litigation and will result in the claim's dismissal.

In *Burwell*, the determination of whether the House had standing to pursue the lawsuit hinged principally on the question of whether the body could show that it, as an institution, had suffered a "concrete and particularized" [injury](#). The [court](#) began by noting that the fact that the lawsuit was authorized by the whole House, "clearly distinguishes this case" from past cases in which Members of Congress, acting in their individual capacities, were denied standing to challenge executive action. *Burwell* involved "an institutional plaintiff asserting an institutional injury" rather than an individual member asserting an injury that is "wholly abstract and widely dispersed." The court then considered whether the injuries alleged "would inflict a concrete, particular harm upon the House for which it has standing to seek redress in this [c]ourt."

At this point, the [court](#) was entering relatively uncharted territory: does the House suffer a constitutionally adequate injury when the executive branch spends money without an appropriation? Or, similarly, when the Administration fails to execute the terms of a statute? With respect to the appropriations question, the court concluded that the House does suffer an adequate injury when funds are drawn from the Treasury without an appropriation, but only "to the extent that it seeks to remedy constitutional violations." The court accorded great significance to Congress's appropriation power, identifying the power of the purse as "the source of virtually all of the House's political power." Consistent with the

essential nature of this power, the court noted that the “constitutional structure would collapse, and the role of the House would be meaningless, if the Executive could circumvent the appropriations process and spend funds however it pleases.” “If such actions are taken, in contravention of the specific proscription in Article I, § 9, cl.7,“ the court concluded, “the House as an institution has standing to sue.”

As opposed to the House’s “continuing and distinct interest” in the appropriations process, the [court](#) determined that the institution has no correlating interest in executive fidelity to statutory provisions. Although the House had argued that the employer mandate delay amounted to a constitutional violation, in that the action “usurped” Congress’s Article I legislative power, the court determined that the claim was “fundamentally a statutory argument.” Here, the court drew a hard line, holding that the House does not suffer an injury adequate to obtain standing when its challenge is to the executive’s “implementation, interpretation, or execution” of the law. Thus, the House had no standing to challenge the Administration’s delay in enforcing the employer mandate.

The district court decision in *Burwell* therefore appears to authorize the House to challenge executive actions that constitute a constitutional violation of Article I, § 9, cl.7. Where the executive branch spends funds without an appropriation from Congress, under *Burwell*, the House would likely have standing to pursue a legal claim in federal court. The opinion, however, also limits the House’s ability to challenge the executive’s implementation of, or compliance with, existing law. In scenarios, for example, in which the executive branch is accused of failing to enforce the law, the House is unlikely to have standing to sue, at least under the reasoning applied in *Burwell*.

Although the court’s holding does not explicitly apply to the Senate, the court’s reasoning would appear to apply to lawsuits authorized by that body given that any injury stemming from a violation of Article I, § 9 would be “[arguably suffered by the House and Senate alike](#)” as they each share in the power of the purse.

The district court will next move to the merits of the House’s claims, unless the government chooses to seek, and is granted, an immediate [appeal](#) of the standing determination.

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