

September 7, 2016

Paul Ryan
Speaker of the United States House of Representatives
1233 Longworth H.O.B.
Washington, DC 20515

Nancy Pelosi
Minority Leader of the United States House of Representatives
233 Cannon H.O.B.
Washington, DC 20515

Dear Speaker Ryan and Representative Pelosi:

As professors who specialize in constitutional law, we write to urge you and your colleagues not to approve the fast-tracked resolution to impeach John Koskinen, Commissioner of the Internal Revenue Service. For the reasons set forth below, we believe that the proposed resolution is an unprecedented rush to judgment that is contrary to the Constitution's original meaning and structure, as well as longstanding traditions of the House of Representatives. Approving the proposed resolution will seriously injure our constitutional system.

1. Impeaching Commissioner Koskinen would be literally unprecedented. In the entire history of the Republic, the House has never impeached a sub-cabinet official. Only once, in 1876, has the House impeached any executive branch official other than the President. With that one exception, the House has impeached only officials who could not be removed from office by any other means—Presidents and federal judges.

The reason for this salutary exercise of self-restraint by the House is that in our constitutional system primary responsibility for supervising executive branch officials resides with the President, not with the Congress. Even assuming that it might conceivably be appropriate for the House to impeach a subordinate executive branch official, such officials should be impeached, if at all, only in truly extraordinary circumstances. Any other course would entangle Congress in the management of the executive branch and set a precedent that is fundamentally at odds with both our constitutional structure and deeply rooted traditions.

2. This case does not present extraordinary circumstances of that kind. We do not claim to judge the accuracy of the statements in the proposed resolution of impeachment, but even accepting the statements at face value, the charges made in

the proposed resolution do not assert bad faith, intentional dishonesty, an abuse of power, or anything akin to the kind of serious misconduct that has historically and traditionally been understood to qualify as an impeachable offense under our Constitution. In our constitutional system, allegations of this kind are the sine qua non of any impeachment of any official.

In an effort to distinguish the constitutional standard from the practice in Great Britain, where anyone could be impeached for any reason, our Constitution's founders narrowed the grounds for impeachment for certain officials to "treason, bribery, or other high crimes or misdemeanors." Congress's impeachment practices for more than two centuries, as well as the leading studies on impeachment, demonstrate that more than poor judgment or making mistakes is required as grounds for impeachment. Impeachment requires both a seriously bad act and bad faith. We note that Senator Orrin Hatch has stated that the record does not demonstrate that Mr. Koskinen is guilty of such conduct, and the proposed resolution does not allege it.

In fact, the proposed resolution, by grounding Mr. Koskinen's impeachment on vague charges such as a failure "to act with competence and forthrightness" and acting "in a manner inconsistent with the trust and confidence placed in him," would have disastrous consequences. Impeachment on such charges would fall far short of the requisite constitutional standard and would not have any meaningful boundaries.

3. Impeachment is a solemn act that should be undertaken only according to procedures that provide an absolute assurance of fairness. Fast-tracking an impeachment resolution would be a grievous and unprecedented breach of this vital principle. The House has never before fast-tracked an impeachment resolution. Certainly there is no good reason to do so here. The House has denied Mr. Koskinen the protections of its longstanding traditions of careful fact-finding and review of the pertinent law, and of allowing the subjects of impeachment proceedings the opportunity to mount a defense before the House Judiciary Committee. The rush to judgment undermines the credibility of the House's contemplated action. If the House moves forward on the current record, we are confident that history will harshly judge its decision as driven by partisanship and electioneering rather than the facts and the law.

Thank you for considering our letter. We hope that, upon reflection, you and your colleagues will agree not to approve the fact-tracked resolution to impeach the IRS Commissioner.

Respectfully submitted,

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