

**WRITTEN STATEMENT OF
JOHN A. KOSKINEN
COMMISSIONER
INTERNAL REVENUE SERVICE
BEFORE THE
HOUSE JUDICIARY COMMITTEE
ON ALLEGATIONS OF MISCONDUCT BY THE IRS COMMISSIONER
SEPTEMBER 21, 2016**

APPENDIX

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July 6, 2016

The Honorable Paul Ryan
Speaker of the House of Representatives
U.S. House of Representatives
Washington, DC 20515

The Honorable Nancy Pelosi
Democratic Leader
U.S. House of Representatives
Washington, DC 20515

The Honorable Kevin Brady
Chairman
Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515

The Honorable Sander Levin
Ranking Member
Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515

Dear Speaker Ryan, Democratic Leader Pelosi, Chairman Brady, and Ranking Member Levin:

We write to express our concern with the proposals being considered in the House to censure or impeach Internal Revenue Service Commissioner John Koskinen. We believe these actions are both disproportionate and counterproductive. They would do serious, long-term damage to our revenue system. They would distract attention from the urgent challenges facing our tax system. They would discourage our most experienced and capable talent from pursuing careers at the IRS when they are most needed. They would erode voluntary tax compliance by undermining confidence in the IRS. Overall, their primary impact would be to harm millions of everyday Americans, small businesses, and other taxpayers as they attempt to comply with their obligations imposed by our tax laws.

As former IRS Commissioners during Republican and Democratic administrations over the last 53 years, we understand well the challenges of leading the IRS. Like other large organizations—both public and private—the IRS has made (and will continue to make) mistakes, both in judgment and execution. We have all made our share. But on balance the IRS is doing a good job in light of the burdens with which it is struggling in order to administer a tax system that is far too complex and burdensome, and is doing so with inadequate and shrinking resources. In our view, much of the success of the present IRS is attributable to its dedicated and capable employees and the leadership of Commissioner Koskinen. Both within IRS and among tax practitioners, Commissioner Koskinen is recognized as an honest and honorable public servant who is trying to do a good job on behalf of our country and its citizens in running the IRS under trying circumstances.

The IRS needs strong leadership to fairly and effectively administer the tax laws and to cause the organization to perform well in doing so. The agency employs over 78,000 Americans and collects over \$2.3 trillion in revenue for Congress to appropriate each year to run the rest of our federal government. A leadership vacuum at the top impedes the Service's ability to perform its most basic functions. And the reality is that impeding the function of the IRS increases tax burdens on law-abiding Americans. Taxpayer service deteriorates, the national debt increases,

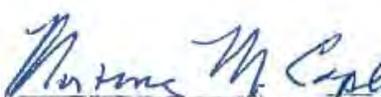
and hard-working American taxpayers end up paying more to subsidize others' failure to pay their fair share.

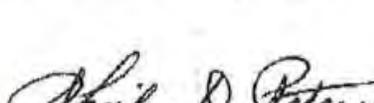
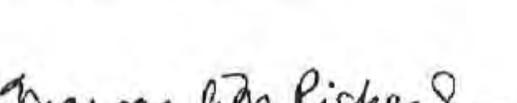
The IRS particularly needs strong leadership and stability right now. It has had four commissioners in the last four years. Congress has cut its annual budget by nearly a billion dollars since 2010 with the result that 15,000 employee positions have been terminated at the same time new laws passed by Congress have imposed significant administrative burdens on the IRS. Constant leadership changes, financial strain, increased workload, and personnel losses have created turmoil and hurt performance. Replacing the IRS Commissioner yet again—leading to the fifth IRS Commissioner in four years—would only make the problems worse.

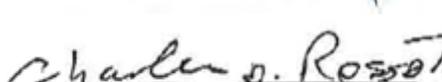
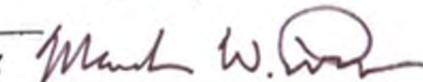
With a proven track record as a respected public servant, Commissioner Koskinen came out of retirement to lead the IRS during a difficult time. He has made considerable progress in addressing issues that pre-dated his time at the IRS, including by undertaking what the Treasury Inspector General for Tax Administration called “significant actions” to address its concerns and by implementing 15 bipartisan recommendations from the Senate Finance Committee.

To serve the best interests of United States taxpayers and the agency that we formerly led, we ask that the House reject censure or impeachment and move forward with the important work of improving the administration of our tax system for all Americans.

Sincerely,

  
Mortimer M. Caplin (1961-64) Sheldon S. Cohen (1965-69) Lawrence B. Gibbs (1986-89)

  
Fred T. Goldberg, Jr. (1989-92) Shirley D. Peterson (1992-93) Margaret M. Richardson (1993-97)

 
Charles O. Rossotti (1997-2002) Mark W. Everson (2003-2007)

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Joan C. Arnold
Pepper Hamilton LLP

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July 13, 2016

The Honorable Paul Ryan
Speaker of the House of Representatives
U.S. House of Representatives
Washington, DC 20515

The Honorable Kevin Brady
Chairman
Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515

The Honorable Nancy Pelosi
Democratic Leader
U.S. House of Representatives
Washington, DC 20515

The Honorable Sander Levin
Ranking Member
Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515

Dear Speaker Ryan, Democratic Leader Pelosi, Chairman Brady, and Ranking Member Levin:

On behalf of the Officers and the Board of Regents of the American College of Tax Counsel, I write to express our significant concerns with the resolutions being considered with respect to the possible impeachment and censure of Internal Revenue Service Commissioner John Koskinen. It is our view that such actions are not commensurate with the alleged conduct and will damage the agency at a time when it needs strong leadership. We do not see any benefit to the agency or our system of laws that could arise from moving forward with these actions.

The Officers and Regents of the College are senior, experienced tax lawyers with decades of experience in dealing with the Internal Revenue Service. Many of our colleagues have devoted years of their professional careers to working at the agency, in service of our country. We have watched the agency struggle with significant decreases in funding that have caused staffing and morale issues. In our practices we have seen the negative impact this has had on our clients, the taxpayers. We often disagree with actions taken by the Internal Revenue Service, and at times we think that things should be done differently. Overall, however, we think that the agency serves the American people in a manner consistent with its vital mission, especially in view of the complexity of the tax law, the additional responsibilities that it has been given over the past few years, and the severe financial constraints under which it operates.

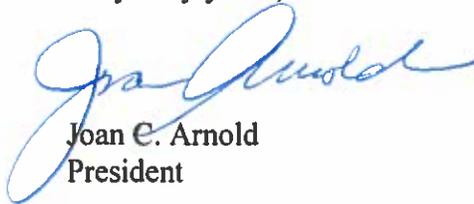
We see the benefits of the steady hand that Commissioner Koskinen, an experienced, dedicated and respected public servant, provides. If he were to be replaced now, the agency would have its fifth Commissioner in four years. This is an enormous organization - it employs over 78,000 people and processes nearly 150 million individual income tax returns filed each year. To be an effective leader, the Commissioner needs to take time to build up the knowledge base, as Commissioner

The Honorable Paul Ryan
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July 13, 2016
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Koskinen has done, and it takes time to build up trust in the employees. We think that the agency and the country will be well served if he is willing and allowed to continue on the path that he has set.

We would respectfully request that Congress reject impeachment and censure, and instead apply its time and attentions to improving both the tax law and the administration of our tax system.

Very truly yours,



Joan E. Arnold
President

Please note that the affiliations of the Officers and Regents are listed solely for purposes of identifying their professional experience and do not reflect the input of such organizations.

August 28, 2016

The Honorable Paul Ryan
Speaker of the House of Representatives
U.S. House of Representatives
Washington, DC 20515

The Honorable Kevin Brady
Chairman
Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515

The Honorable Nancy Pelosi
Democratic Leader
U.S. House of Representatives
Washington, DC 20515

The Honorable Sander Levin
Ranking Member
Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515

RE: Opposition to Impeachment or Censure of IRS Commissioner

Dear Leaders of Congress:

We the undersigned 124 tax law professors teach in law schools across America. We teach tax law and respect for the process of law in Utah, Montana, Texas, Georgia, Louisiana, Nevada, Florida, Pennsylvania and Ohio as well as in Massachusetts and Washington, D.C. and places in between.

We urge you to oppose any resolution to impeach or censure John Koskinen, the Commissioner of Internal Revenue.

We teach our students how to represent clients in positions adverse to the Internal Revenue Service, but we also teach our students respect for the law and for the IRS. The IRS carries out a vitally important mission for our country. Respect for the IRS fosters the voluntary compliance that is essential for our revenue system to work.

Impeachment or censure will harm the country by weakening our revenue system. Impeachment or censure would disrupt the functioning of the IRS—which has had four Commissioners in as many years—leading to increased tax evasion, reduced revenue collection, and a higher national debt. Impeachment or censure would also set a dangerous precedent and deter talented people from working to improve the country's struggling revenue system.

We also fear that targeting Commissioner Koskinen will distract the Congress from the vital work of enacting meaningful tax reform. Academics, practitioners, and businesses agree that we must revise our revenue system to rationalize and simplify the rules, and to minimize the collateral costs of raising the necessary revenue.

We believe that nothing that has been reported provides any basis for impeachment or censure. Commissioner Koskinen was called out of retirement when the IRS needed help, and responded for the simple reason that it was the time for all good citizens to come to the aid of their country.

We respectfully request that the House reject misguided efforts to impeach or censure Commissioner Koskinen, and focus instead on enacting meaningful reforms to our revenue system.

Sincerely,

			[school for identification only]
1	Utah	Professor Clifton Fleming	J. Rueben Clark Law School, BYU
2	Utah	Professor Nancy A. McLaughlin	Univ. of Utah SJ Quinney College of Law
3	Utah	Assistant Professor Gladriel Shobe	J. Reuben Clark Law School, BYU
4	Idaho	Professor Victoria Haneman	Concordia Univ. School of Law
5	West Virginia	Professor Elaine Wilson	Univ. of West Virginia Law School
6	Kentucky	Professor Jennifer Bird-Pollan	Univ. of Kentucky
7	Kansas	Professor Lori McMillan	Washburn Law School
8	Alabama	Professor Tracey M. Roberts	Cumberland School of Law
9	So. Carolina	Assistant Professor Tessa Davis	Univ. of South Carolina School of Law
10	Mississippi	Professor Karen Green	Univ. of Mississippi School of Law
11	Mississippi	Associate Professor Donna R. Davis	Univ. of Mississippi School of Law
12	Montana	Associate Professor Pippa Browde	Univ. of Montana School of Law
13	Montana	Professor Elaine Gagliardi	Univ. of Montana School of Law
14	Oklahoma	Professor Jonathan Forman	Univ. of Oklahoma Law School
15	Nebraska	Professor Emeritus Bill Lyons	Univ. of Nebraska Law School
16	Georgia	Professor Camilla E Watson	Univ. of Georgia Law School
17	Georgia	Associate Professor Lisa Milot	Univ. of Georgia Law School
18	Arizona	Professor Adam Chodrow	Arizona State Univ. College of Law
19	Arizona	Associate Professor Erin Scharf	Arizona State Univ. College of Law
20	Maine	Jeffrey A. Maine	Univ. of Maine School of Law
21	Louisiana	Professor Marjorie Kornhauser	Tulane Law School
22	Louisiana	Professor Philip Hackney	LSU Law Center

23	Missouri	Professor Henry Ordower	St. Louis Univ. School of Law	
24	Missouri	Professor Kerry Ryan	St. Louis Univ. School of Law	
25	Tennessee	Professor Michelle M. Kwon	Univ. of Tennessee	
26	Tennessee	Professor Don Leatherman	Univ. of Tennessee	
27	Indiana	Professor Randle B. Pollard	Univ. of Indiana Law School	
28	Indiana	Professor Del Wright	Valparaiso Univ. Law	
29	Indiana	Professor Joni Larson	Indiana Tech Law School	
30	Indiana	Professor Leandra Lederman	Univ. of Indiana	
31	Indiana	Professor David Herzig	Valparaiso Law School	
32	Indiana	Professor Lloyd Mayer	Notre Dame Law School	
33	Nevada	Professor Francine Lipman	Univ. of Nevada Law School	
34	Texas	Professor Bryan Camp	Texas Tech Law School	
35	Texas	Professor Robert Peroni	Univ. of Texas Law School	
36	Texas	Professor Calvin Johnson	Univ. of Texas Law School	
37	Texas	Professor Mark Cochran	St. Mary's Law School	
38	Texas	Professor Bruce McGovern	Houston Law School	
39	Texas	Assistant Professor Susan Morse	Univ. of Texas Law School	
40	Texas	Professor Paul Asofsky	Univ. of Houston Law School	
41	Texas	Professor Terri Helge	Texas A&M Law School	
42	No. Carolina	Professor Richard Schmalbeck	Duke Law School	
43	No. Carolina	Professor Lawrence Zelenak	Duke Law School	
44	Maryland	Professor Fred Brown	Univ. of Baltimore Law School	
45	Michigan	Professor Reuven Avi-Yonah	Univ. of Michigan School of Law	
46	Michigan	Professor Linda M. Beale	Wayne State School of Law	
47	Colorado	Professor David Hasen	Univ. of Colorado Law School	
48	Pennsylvania	Professor Alice G. Abreu	Temple Law School	
49	Pennsylvania	Professor David Shakow	Pennsylvania Law School	
50	Pennsylvania	Professor Reed Shuldiner	Pennsylvania Law School	
51	Pennsylvania	Professor Keith Fogg	Villanova Law School	
52	Pennsylvania	Professor Norman Stein	Drexel Law School	
53	Pennsylvania	Professor Leslie Book	Villanova Law School	
54	Pennsylvania	Professor Jim Maule	Villanova Law School	
55	Pennsylvania	Professor Andrea Monroe	Temple Law School	
56	Ohio	Professor Stephanie Hunter McMahon	Univer of Cincinnati College of Law	
57	Ohio	Professor Carolyn L. Dessin,	Univ. of Akron Law School	
58	Ohio	Professor Stephanie Hoffer	Ohio State Law School	
59	Ohio	Professor Deborah A. Geier	Cleveland-Marshall College of Law	
60	Florida	Professor Emeritus Joseph Dodge	Florida State College of Law	
61	Florida	Professor Charlene Luke	Univ. of Florida Levin College of Law	

62	Florida	Professor Elena Maria Marty-Nelson	NSU Nova Law School	
63	Florida	Professor Martin J McMahon	Univ. of Florida Levin College of Law	
64	Iowa	Professor Carolyn C. Jones	Univ. of Iowa College of Law	
65	Iowa	Professor Emeritus Marin Begleiter	Drake Univ. Law School	
66	Virginia	Professor George Yin	Univ. of Virginia Law School	
67	Virgina	Professor Mary Heen	Univ. of Richmond School of Law	
67	Virgina	Professor Andrew Hayashi	Univ. of Virginia Law School	
68	Virginia	Professor Thomas R. White III	Univ. of Virginia Law School	
69	Delaware	Professor Christine D. Allie	Delaware Law School	
70	Wisconsin	Professor Susannah Tahk	Univ. of Wisconsin	
71	Connecticut	Emerita Professor Toni Robinson	Quinnipac Univ. Law School	
72	Oregon	Professor Roberta F. Mann	Univ. of Oregon School of Law	
73	Oregon	Professor Jack Bogdanski	Lewis & Clark Law School	
74	California	Professor Patricia Cain	Santa Clara Univ. Law School	
75	California	Professor Joseph Bankman	Stanford School of Law	
76	California	Professor Richard Winchester	Thomas Jefferson School of Law	
77	California	Professor Michael B. Lang	Chapman Univ. School of Law	
78	California	Professor Theodore P. Seto	Loyola Law School- Los Angeles	
79	California	Professor Ellen Aprill	Loyola Law School- Los Angeles	
80	California	Professor Edward Kleinbard	Univ. of Southern California	
81	California	Professor Katherine Pratt	Loyola Law School- Los Angeles	
82	California	Professor Frank J. Doti	Chapman Univ. School of Law	
83	California	Professor Bruce Wolk	Univ. of California, Davis	
84	California	Professor Jordan Barry	San Diego Law School	
85	California	Professor Heather M. Field	Univ. of California Hastings	
86	New York	Professor Alan Appel	New York Law School	
87	New York	Professor Ann Thomas	New York Law School	
88	New York	Professor Brad Borden	Brooklyn Law School	
89	New York	Visiting Professor Michael Hirshfeld	Cornell Law School	
90	New York	Professor David Kamin	NYU Law School	
91	New York	Professor Deborah Schenk	NYU Law School	
92	New York	Professor Daniel Shaviro	NYU Law School	
93	New York	Professor Lily Batchelder	NYU Law School	
94	New York	Professor Victor Zonana	NYU Law School	
95	New York	Professor David Pratt	Albany Law School	
96	New York	Professor Rebecca Kysar	Brooklyn Law School	
97	New York	Professor Linda Galler	Hofstra Univ. Law School	
98	Maryland	Professor Fred Brown	Univ. of Baltimore School of Law	
99	Mass.	Professor Meredith Conway	Suffolk Law School	

100	Mass.	Professor Ray Madoff	Boston College Law School	
101	Mass.	Assistant Professor Julian Fray	Northeastern Univ. School of Law	
102	Mass.	Professor Emeritus Hugh Ault	Boston College Law School	
103	Mass.	Professor Alan Feld	Boston Univ. Law School	
104	Mass.	Senior Lecturer Stephen E. Shay	Harvard Law School	
105	Mass.	Professor Theodore Sims	Boston Univ. Law School	
106	New Jersey	Professor Tracy Kaye	Seton Hall Univ. School of Law	
107	New Jersey	Professor Cynthia Blum	Rutgers Law School	
108	Illinois	Assistant Professor Hayes Holderness	Univ. of Illinois Law School	
109	Illinois	Professor Emeritus John Colombo	Univ. of Illinois Law School	
110	Illinois	Professor Julie Roin	Univ. of Chicago Law School	
111	Illinois	Professor Emily Cauble	DePaul Law School	
112	Illinois	Professor Evelyn Brody	Chicago-Kent College of Law	
113	Illinois	Professor David Weisbach	Univ. of Chicago Law School	
114	Illinois	Assistant Professor Daniel Hemel	Univ. of Chicago Law School	
115	Vermont	Professor Stephanie Willbanks	Vermont Law School	
116	Washington	Professor Ann Murphy	Gonzaga Law School	
117	DC	Professor Ben Leff	American Univ. College of Law	
118	DC	Emeritus Professor Ronald A. Pearlman	Georgetown Univ. Law Center	
119	DC	Professor Karen Brown	George Washington Law School	
120	DC	Professor Nancy Abramowitz	American Univ. College of Law	
121	DC	Professor Neil H. Buchanan	George Washington Law School	
122	DC	Professor Roger Colinvaux	Catholic Univ. Law School	
123	DC	Professor Brian Galle	Georgetown Univ. Law Center	
124	DC	Professor Stephen Cohen	Georgetown Law School	

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,

Michael C. Dorf
Robert S. Stevens Professor of Law
Cornell University School of Law

Peter B. Edelman
Carmack Waterhouse Professor of Law & Public Policy
Faculty Director, Center on Poverty & Inequality
Georgetown University School of Law

Daniel Farber
Sho Sato Professor of Law
Co-Director, Center for Law, Energy & the Environment
University of California at Berkeley School of Law

Michael J. Gerhardt
Samuel Ashe Distinguished Professor in Constitutional Law
University of North Carolina School of Law

John C. Jeffries Jr.
David & Mary Harrison Distinguished Professor of Law
University of Virginia School of Law

William P. Marshall
William Rand Kenan, Jr. Distinguished Professor of Law
University of North Carolina School of Law

Gillian E. Metzger
Stanley H. Fuld Professor of Law
Columbia Law School

Jack Rakove
Coe Professor of History & American Studies
Professor of Political Science
Professor, by courtesy, of Law
Stanford University

Kermit Roosevelt
Professor of Law
University of Pennsylvania Law School

Christopher H. Schroeder
Charles S. Murphy Professor of Law & Public Policy Studies
Co-Director of the Program in Public Law
Duke University School of Law

Peter M. Shane
Jacob E. Davis & Jacob E. Davis II Chair in Law
The Ohio State University Moritz College of Law
Neil S. Siegel
David W. Ichel Professor of Law & Professor of Political Science
Co-Director of the Program in Public Law
Director of the DC Summer Institute on Law & Policy
Duke University School of Law

David A. Strauss
Gerald Ratner Distinguished Service Professor of Law
University of Chicago Law School



September 7, 2016

The Honorable Paul Ryan
Speaker of the House of Representatives
U.S. House of Representatives
Washington, DC 20515

The Honorable Nancy Pelosi
Democratic Leader
U.S. House of Representatives
Washington, DC 20515

The Honorable Kevin Brady
Chairman
Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515

The Honorable Sander Levin
Ranking Member
Committee on Ways and Means
U. S.W. House of Representatives
Washington, DC 20515

RE: Opposition to Impeachment or Censure of IRS Commissioner

Dear Leaders of Congress:

We are writing on behalf of the National Society of Accountants (“NSA”) to urge that you oppose any resolution to impeach or censure John Koskinen, the Commissioner of Internal Revenue.

As you may know, NSA and its affiliated state organizations represent more than 20,000 professionals who provide accounting, advisory and tax related services to more than 19 million individuals and small businesses.

The IRS plays a fundamental role in our system of government by ensuring that our nation's taxes are assessed in compliance with our tax code and that the tax laws are enforced fairly and credibly. NSA members are committed to providing the best possible service to taxpayers and represent taxpayers in the tax return preparation process as well as any tax disputes that inevitably arise given the complexity of the tax code. As such, we are involved in both the assessment and enforcement aspects of the tax system on behalf of our clients.

We are concerned that the effort to censure or impeach Commissioner Koskinen will hasten the deterioration of the voluntary compliance system that is the cornerstone of our taxing structure. The lack of respect for the IRS shown by such an effort, especially when coupled with the significant budget cuts enacted over the last several years, is already apparent as evidenced by the numerous taxpayers who ask NSA members why they should pay their taxes when the IRS does not have the ability to audit them.

We are also concerned that impeachment or censure will further disrupt the functioning of the IRS, which already suffers from low morale as a result of inadequate budgets and the inability to hire sufficient staff to deal with an ever-increasing work load.

Finally, the effort to impeach or censure Commissioner Koskinen will inevitably take up time the Congress could better spend enacting meaningful tax reform that the taxpaying public, tax professionals, Congress, and the Administration all agree is long overdue.

Sincerely,



Alfred C. Giovetti
President



John G. Ams
Executive Vice President

September 14, 2016

The Honorable Paul Ryan
Speaker of the House
House of Representatives
Washington, DC 20515

The Honorable Nancy Pelosi
Democratic Leader
House of Representatives
Washington, DC 20515

Dear Speaker Ryan and Leader Pelosi:

We, as professors who specialize in constitutional law, write to urge you and your colleagues not to approve the fast-tracked resolution to impeach John Koskinen, Commissioner of the Internal Revenue Service.

When it comes to impeachment, the Constitution leaves many open and difficult questions. Whether the alleged conduct of John Koskinen is impeachable is not one of them. There is simply no credible case for impeachment.

The Constitution is designed to reserve the impeachment and removal from office for conduct that inflicts the most serious harms on society and that critically compromises the ability of an officer to govern. The Constitution limits the availability of impeachment in two ways. First, the Constitution provides a very limited definition of the scope of impeachment. Second, the Constitution erects significant procedural protections against impeachment and removal from office.

I. The Constitution defines the scope of the impeachment power narrowly.

An officer is subject to impeachment and removal from office only on the grounds of “treason, bribery, or other high crimes and misdemeanors.” It is true that the phrase “other high crimes and misdemeanors” is open-ended. It is nonetheless clear that the phrase charts a narrow scope. The text explicitly links the phrase – by employing the term “other” – to definite terms treason and bribery. The familiar canon of construction, *eiusdem generis*, tells us that it is proper to understand the open-ended term as limited to conduct that involves the attributes common to the definite terms. Treason and bribery each involves an immediate and elemental threat to our constitutional system; an officer who commits either of these offenses is indisputably unfit for office. Thus, the phrase “high crimes and misdemeanors” refers not to any misconduct but to misconduct that harms the nation as seriously as treason or bribery and that renders an officer as indisputably unfit to serve as an officer who commits treason or bribery.

The original understanding of the impeachment power substantiates our interpretation. The Framers debated the scope of the power and settled on the “high crimes and misdemeanors” formulation precisely to prohibit Congress from impeaching officers for any misconduct at all. The Framers were determined to limit the grounds on which an officer could be impeached in order to safeguard another constitutional principle: the separation of powers.

It is clear that, in our constitutional system of government, the executive branch is to be independent from the legislature. The Framers recognized the potential for impeachment to undermine this principle. If Congress can impeach and remove the President or

Supreme Court Justices for any reason at all, then these officers serve at the will of Congress and are subject to its control.

An early draft of the Constitution gave Congress the power to impeach and remove officers for “maladministration.” James Madison objected to this because the term was so vague that it would allow impeachment for any reason at all. As he put it, “so vague a term will be equivalent to a tenure during the pleasure of the Senate.” 2 THE RECORDS OF THE FEDERAL CONVENTION OF 1787, at 550 (Max Farrand ed., 1966). The term “maladministration” was then deleted from the draft and replaced by the phrase “other high crimes and misdemeanors.” This shows that the Framers meant for the phrase “high crimes and misdemeanors” to signify that only conduct that seriously harms the public and seriously compromises the officer’s ability to continue. If the phrase is given a more expansive interpretation, it could allow Congress to influence and control the execution of the law. Such an interpretation would be at odds with the text and structure of the Constitution and with the Framers’ original understanding.

Practice further confirms our interpretation. Only once in our nation’s history has an executive branch officer subordinate to the President been impeached. In 1876, the House of Representatives impeached Secretary of War William Belknap. Secretary Belknap was found to have accepted a series of illegal kickback payments. Regardless of whether Belknap’s behavior met the technical requirements of bribery, it was clearly the equivalent of bribery in terms of the harm inflicted upon the nation and Belknap’s manifest unfitness to remain in office.

The contrast between this textual, original, and practical understanding of what constitutes “high crimes and misdemeanors” and the allegations against Commissioner John Koskinen could not be any more stark. The allegations are set forth in four articles of impeachment introduced by Representative Jason Chaffetz. The articles allege that Koskinen has failed to be transparent and open with Congress and the public, that he has mismanaged the I.R.S. by failing to prevent employees in West Virginia from accidentally erasing back up tapes of email messages, and that statements in his congressional testimony later turned out to be untrue.

Even if these allegations are all true, they do not rise to the level of impeachable “high crimes and misdemeanors.” The matter has been investigated by both the Department of Justice and the Treasury Department’s Inspector General. Neither found any wrongdoing by Commissioner Koskinen. Each found that Koskinen had testified truthfully according to what he knew at the time of his testimony and that he corrected the record when he later discovered that his testimony had been inaccurate. Further, these investigations concluded that the erasure of back up tapes was accidental and was done by I.R.S. employees in West Virginia without the knowledge or involvement of Commissioner Koskinen. This record does not evince any conduct that threatens the sort of public harm that follows from treason or bribery. It does not include anything that might be characterized as a high crime or misdemeanor. It is not even close.

II. The Constitution erects significant procedural barriers to impeachment.

Where the Constitution means to restrain power, it does not leave the limit to a textual definition alone, which James Madison derided as “mere parchment barriers.” Instead, the Constitution establishes a system of countervailing powers in a procedure of checks and balances. Impeachment is no exception. The House of Representatives holds the power to impeach an officer, but this act becomes effective only if the Senate tries the impeachment and convicts the officer. Thus, the power is divided. Most significantly, an officer may only be convicted and removed by a vote of two-thirds of the Senate. The design is to require that it be obvious that the remedy of impeachment and removal is justified. Achieving a vote of two-thirds in the Senate requires a bipartisan consensus that is rare not only in our contemporary political culture, but that has been rare throughout the nation’s history. This is why the Constitution reserves the two-thirds requirement for such exceptional measures as ratifying a treaty and overriding a presidential veto.

With respect to Commissioner Koskinen, there is no bipartisan consensus that the allegations against him represent impeachable offenses. In fact, there is a bipartisan consensus that John Koskinen has done nothing that is even remotely impeachable. For example, Senator Orrin Hatch has said, “We can have our disagreements with him, but that doesn’t mean there’s an impeachable offense, [and] for the most part, he’s been very cooperative with us.” Fred T. Goldberg, a Republican who headed the I.R.S. under President George H.W. Bush, has called the articles of impeachment filed against Koskinen “preposterous.”

In light of these assessments, it is clear that the articles of impeachment are completely lacking in substance and would serve no genuine purpose. This is not why the Framers included the impeachment mechanism in the Constitution.

Signed,

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The Honorable Paul Ryan
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Impeaching IRS chief won't solve anything



WASHINGTON, DC - MAY 24: Rep. Jason Chaffetz (R-UT), testifies during a House Judiciary Committee hearing on Capitol Hill, May 24, 2016 in Washington, DC. The committee was examining the allegations of misconduct against IRS Commissioner John Koskinen. (Photo by Mark Wilson/Getty Images) ** OUTS - ELSSENT, FPG, CM - OUTS * NM, PH, VA if sourced by CT, LA or MoD ** (Mark Wilson / Getty Images)

By **Bloomberg View**

MAY 25, 2016, 6:37 PM

Pity John Koskinen, who agreed to take one of the worst jobs in America and is now being punished for it. In 2013, President **Barack Obama** asked Koskinen to take over at the **Internal Revenue Service** amid budgetary chaos, deteriorating morale and a simmering scandal. House **Republicans**, still angry about that scandal — and about the concept of taxation generally — are now trying to impeach him.

Their case is weak, and the ultimate loser in this sorry spectacle won't be Koskinen.

Start with the scandal. An inspector general report in 2013 found that IRS employees had been improperly scrutinizing conservative groups seeking tax-exempt status. This was wrong, and blame was duly apportioned.

The agency's boss resigned, a top deputy retired and the director of the offending unit was placed on leave and declared in contempt of Congress. Half a dozen congressional committees vowed to fumigate every pixel of

offending detail. One managed to produce an 8,000-page report. The Justice Department investigated (and found no evidence of criminality).

But you have to get up pretty early in the morning to outfox the House Oversight and Government Reform Committee. Rep. **Jason Chaffetz**, of Utah, the committee's chairman, has made a professional specialty of berating civil servants. He appears to view Koskinen — who, recall, joined the agency after this scandal — as obstructing further investigation.

The specific allegations Chaffetz has cited hardly add up to high crimes and misdemeanors. At worst, they portray mild bureaucratic ineptitude. And removing Koskinen from office stands no chance in legislative reality. Nothing's shaking on Shakedown Street, as they used to say.

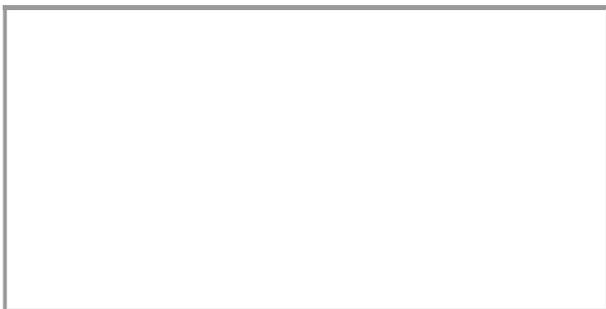
Actually impeaching Koskinen — a punishment not invoked against an executive-branch appointee since Ulysses S. Grant occupied the White House — probably isn't the objective anyway. The point is to embarrass the IRS. And congressional Republicans have already done a fine job of that by slashing the agency's budget while helping to vastly expand its responsibilities, with predictably frustrating results.

Taxpayers, in other words, are the ones who ultimately suffer when Congress ignores more pressing business in favor of needlessly antagonizing the IRS. They're also the ones footing the bill for 8,000-page reports and shambolic impeachment proceedings.

This editorial was written by the Bloomberg View Editorial Board.

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This article is related to: [Internal Revenue Service](#), [Republican Party](#), [Barack Obama](#), [Jason Chaffetz](#)



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Editorial: Facts fail to support IRS impeachment effort

The Register's Editorial 4:04 a.m. CDT May 30, 2016



(Photo: Andrew Harnik, AP)

The aphorism known as Hanlon's razor dictates that one should never attribute to malice that which is adequately explained by stupidity.

Where some people see evil intent and conspiracies behind every misdeed, the more likely explanation is good old-fashioned incompetence. That's particularly true in Washington, D.C., where, despite the political machinations that seem to drive every decision, bureaucratic bungling is responsible for most of the federal government's sins.

Even so, some Republican leaders in the House believe IRS Commissioner John Koskinen has engaged in a long-running effort to deceive Congress and the public. As they see it, Koskinen should be impeached for his response to claims that the agency targeted conservative organizations that sought tax-exempt status.

Rep. Jason Chaffetz of Utah, chairman of the House Committee on Oversight and Government Reform, is leading the charge for impeachment, but he has had only limited success so far. Democrats are universally opposed to impeachment, which is no surprise, but so, too, are many Republicans.

It's easy to see why. Chaffetz has accused Koskinen of failing to provide congressional investigators with subpoenaed evidence; not testifying truthfully about the destruction of IRS emails; and failing to promptly inform Congress that emails considered important to its investigation were missing.

Koskinen's response to these allegations are reasonable and supported by the evidence. For example, he attributes the 90-day delay in telling Congress about the destroyed emails to the delay in determining just how much data had actually been lost.

He also says he assured Congress that IRS emails had been preserved — a claim that turned out to be untrue only because he wasn't aware at the time they had been destroyed. Koskinen's explanation is supported by the findings of the IRS inspector general.

Chaffetz correctly claims that 422 computer tapes containing up to 24,000 IRS emails were destroyed while Koskinen was in charge. But the inspector general investigated the destruction of those emails and concluded it was the result of an honest mistake, not part of an effort to withhold information from Congress.

It's also important to remember that Koskinen didn't begin running the agency until December 2013, which was more than three years after it was disclosed that the IRS had been scrutinizing the rapidly growing number of organizations that were purely political in nature but were seeking tax-exempt status as "social welfare" groups.

As it turned out, the IRS was, indeed, subjecting conservative and tea party organizations to closer scrutiny, but only as part of the larger effort to examine all partisan political campaign organizations that were seeking tax-exempt status. To quickly identify potential violators, the agency had singled out nonprofits that had the words "tea party" or "patriots" in their names. Only a quarter of the organizations flagged for closer scrutiny were tea party-related, but even so, the practice was seriously flawed and resulted in an apology from the IRS.

The Justice Department investigated the matter for two years and ultimately concluded that there was no evidence that IRS officials had acted out of political bias in focusing on any organizations, conservative or otherwise.

Given all of that, the effort to impeach Koskinen appears to be a face-saving move by Chaffetz to justify his fruitless, six-year campaign to demonize the IRS for political bias. ✕

Even Fred Goldberg, who served as IRS commissioner under the first President George Bush, says Chaffetz's allegations are "preposterous" and calls the impeachment effort "way over the line."

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When it comes to abuse of power, Chaffetz has more to answer for than Koskinen
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The GOP Congress is unfairly targeting the IRS

By Editorial Board June 19

MOST OF the country has moved on from the Internal Revenue Service targeting controversy, which turned out to be not much of a scandal. Although initial reports seemed highly suspicious, it's been clear for some time that administrative incompetence was the likely culprit, not the Obama administration vindictively singling out conservative groups for IRS scrutiny. But Rep. Jason Chaffetz (R-Utah) and the other Republicans on the House Oversight and Government Reform Committee are still outraged. Having turned what could have been a wholly reasonable investigation of IRS carelessness into a partisan scandal hunt, the most concrete result from their inquiries may end up being a gratuitous attack on a longtime public servant.

The committee voted on party lines Wednesday to censure IRS Commissioner John Koskinen, the man President Obama tapped to lead the agency after reports that IRS employees had disproportionately scrutinized conservative nonprofits. Nonprofits that may engage in political activity deserve IRS attention, because the government should not be subsidizing political groups through the tax code. The problem was the thoughtless way IRS employees went about determining which groups to examine. Mr. Koskinen, an old bureaucratic hand, was not at the IRS when this happened. He was just supposed to clean things up afterward.

As their inquiry failed to turn up evidence of malign political motives, House Republican investigators turned their sights on Mr. Koskinen personally, claiming that he badly — perhaps purposely — bungled his assignment. IRS employees destroyed a trove of emails the committee wanted to see — after the agency was supposed to be saving them. The IRS's inspector general found that the erasure was an honest, if frustrating, mistake. Still, Mr. Koskinen's congressional inquisitors charge, he did not confess to Congress when he should have. Some statements he made to Congress turned out to be untrue. The IRS director has a reasonable response to that, too: He did not immediately know the nature or extent of the gap in emails, and once he did, he ordered his staff to attempt to recover what they could.

The GOP Congress has already harassed and weakened the IRS through counterproductive budget cuts. Now Republican lawmakers appear to be doing their best to deter anyone of competence from ever agreeing to lead the agency. The result of a congressional investigation into IRS dysfunction would end up being more IRS dysfunction.

That doesn't seem to worry Mr. Chaffetz. He has been pushing not just for censure but also for impeachment, which, he told us, "should be a much more common occurrence." In fact, there is a good reason Congress has not impeached an executive appointee since 1876: It would invite governmental chaos. Federal agencies could not operate with the threat of politically

motivated dismissal constantly hanging over those who run them. It is hard enough keeping the top rungs of the bureaucracy staffed by smart people, many of whom could earn more in the private sector.

Luckily, impeachment seems to be going nowhere. Which is where this censure resolution should end up, too.

Read more about this topic:

[The Post's View: Congress should let the IRS do its job, not tie its hands](#)

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After settling at or near yearly lows most of the summer, the 30-year fixed-rate average increased to 3.5 percent this week.

IRS impeachment overkill: Our view

The Editorial Board 9:27 p.m. EDT June 21, 2016

Commissioner Koskinen doesn't deserve this.



(Photo: Michael Reynolds, epa)

With their customary lack of subtlety, House Republicans are trying to unleash a nuclear bomb to swat the proverbial fly. The fly is IRS Commissioner [John Koskinen](#). The bomb is impeachment, which has been used against an executive-branch official only three times in the nation's history.

The allegations against Koskinen, while serious, do not rise anywhere near the level of becoming a fourth historic case. An impeachment resolution — which the House Judiciary Committee is [scheduled to hear testimony on Wednesday \(/story/news/politics/2016/06/15/house-panel-votes-censure-irs-chief-alleged-obstruction/85917342/\)](#) — would diminish what's supposed to be a last-resort option for removing a corrupt official for alleged “high crimes and misdemeanors.” The IRS scandal does not qualify; for one

thing, Koskinen, 76, wasn't even at the IRS when the underlying scandal occurred.

By overplaying their hand, the Republicans are obscuring serious questions about IRS misuse of its immense power. Koskinen was brought in to clean up the agency after revelations in 2013 that its tax-exempt division had targeted conservative organizations, including Tea Party groups, because of their political beliefs. The IRS sent the groups burdensome inquiries and delayed their applications for tax exemption, stopped some from participating in the 2012 presidential election.

While the IRS has a legitimate role in preventing blatantly political groups from exploiting tax-exempt status, targeting groups based on their politics is reminiscent of Richard Nixon using the IRS to harass his “enemies.” Even President Obama acknowledged that such actions were “intolerable and inexcusable.” The scandal spurred congressional hearings, high-level resignations from the IRS and an FBI investigation, which found no criminal wrongdoing.

When Koskinen took over the agency, there was a need for openness and disclosure to get to the bottom of what happened. Instead, Koskinen presided over a “clean-up” marked by disappearing emails, bungled searches for backups, and a penchant for secrecy so strong that the IRS has resisted federal court orders to disclose documents to the groups targeted.



[USA TODAY](#)

[Rep. Jordan: Impeach IRS commissioner](#)

[\(http://www.usatoday.com/story/opinion/2016/06/21/irs-commissioner-john-koskinen-jim-jordan-editorials-debates/86212160/\)](http://www.usatoday.com/story/opinion/2016/06/21/irs-commissioner-john-koskinen-jim-jordan-editorials-debates/86212160/)

In March, the [6th U.S. Circuit Court of Appeals](#) blasted the agency for resisting “at every turn” orders to disclose a list of those targeted. The court called the targeting allegations “among the most serious” a federal court can address. The appeals judges rebuked the IRS for using a post-Watergate statute designed to protect taxpayers' from government mistreatment as a way to avoid disclosing documents. The law, the judges wrote, “was enacted to protect taxpayers from the IRS, not the IRS from taxpayers.”

The trial judge in the same case suggested that government lawyers were trying to drag out the case, “so that by the time there is a result, nobody is going to care except the plaintiffs” — a very astute observation. If government lawyers run out the clock until January, the [Obama administration](#) would never have to answer for whatever sins the documents might reveal.

Republicans have good reason to press for release of relevant IRS documents, such as lists of the 426 targeted groups and emails by retired IRS official Lois Lerner, who was at the center of the controversy. But [an official censure \(/story/news/politics/2016/06/15/house-panel-votes-censure-irs-chief-alleged-obstruction/85917342/\)](#) of Koskinen last week on a party-line vote of the House Oversight and Government Reform Committee, and the looming impeachment threat, are as misplaced as Republicans' draconian cuts to the IRS budget. As the agency has struggled to do more with less, customer service has withered, identity theft has run rampant and reduced enforcement has allowed tax cheats to get away with more cheating.

If Congress wants to be helpful, it should simplify the absurdly complex tax code and give the IRS enough money to do its job, not waste time on overblown impeachment threats.

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EDITORIALS SEPTEMBER 5, 2016 1:30 PM

Should the IRS chief be impeached?



THE OBSERVER EDITORIAL BOARD

Congress returns to work Tuesday, and at the top of several members' to-do list is impeaching IRS Commissioner John Koskinen.

He would be the first sub-Cabinet executive branch officer ever impeached. And if House Republican Freedom Caucus members get their way, Koskinen won't even be given a chance to defend himself.

It's hard, we know, to gin up much sympathy among Americans for the chief tax collector. It's even harder when the Internal Revenue Service has made so many missteps in recent years. The extent of Koskinen's imperfections, though, is debatable; they almost surely fall far short of the "high crimes and misdemeanors" that impeachment requires.

At best, he is a faithful public servant who came out of retirement at age 74 out of a sense of duty and has given his all to righting a mismanaged, understaffed and perhaps at times vindictive agency that he inherited.

It's possible his performance has been sporadic and his commitment to transparency inconsistent. That would, unfortunately, make him a Washington regular, but not a criminal traitor.

At a minimum, he deserves an exhaustive hearing and opportunity to defend himself in front of the House Judiciary Committee before such an extraordinary – and politically motivated – action is taken.

That's not what Freedom Caucus members like North Carolina's Rep. Mark Meadows envision. They are willing to take Koskinen's fate to the House floor for an up-or-down vote with no due process. That would violate tradition and establish an ominous precedent.

Koskinen (a Duke grad and former chair of Duke's board of trustees) took over in December 2013, charged with cleaning up the mess made by Lois Lerner. Lerner was at the center of a scandal prior to Koskinen's arrival in which the IRS mostly targeted conservative political groups in their applications for nonprofit tax-exempt status.

Congress issued a subpoena to Koskinen seeking all of Lerner's emails. Weeks later, IRS employees in West Virginia erased 422 backup tapes that contained as many as 24,000 of Lerner's emails.

There is no evidence that Koskinen was personally involved in the deletion. The Republican-appointed inspector general investigating Lerner's actions said the erasure was an accident stemming from a miscommunication.

The rest of the resolution to impeach Koskinen is flimsy. It accuses him of making “false and misleading statements” to Congress. Koskinen says he testified to what he thought was true at the time, even if some of it later turned out not to be accurate.

Koskinen deserves credit for making fundamental changes to prevent a repeat of the Lerner episode. He implemented 15 bipartisan reforms recommended by the Senate Finance Committee, and the inspector general said Koskinen took “significant actions” to address the agency’s problems.

Lerner’s actions were unacceptable, and the IRS’s failure to retain vital documents in the case is disturbing. So Congress is right to continue to pursue questions. Impeachment, though, is almost certainly using a bazooka to kill a roach. At the least, Koskinen, who has offered a lifetime of public service and ethical behavior, deserves a chance to fully tell his side of the story.



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David Cortinas · Owner-operator at Self-Employed

I wonder if people would call this a waste of tax money if Democrats were targeted by the IRS? The answer is hell no. It would be on 24 hours a day Liberal talking heads would on camera talking about government corruption. Hoardes of professional protesters would be camped out in front of the IRS offices. Hyprocrisy as usual.

Like · Reply · Sep 7, 2016 7:33am



Bob Harrison · Virginia Commonwealth University

Here’s a better idea that will save Americans \$7,000,000 a day... Shut down the Clown Congress... It’s nothing but Republican theater... This is a waste of OUR MONEY...

Like · Reply · Sep 6, 2016 9:28pm



Frann Burgess

YES!!! iT Is Time to Send a Message to those that purposely LIE especially to Cover for a Political Agenda and hurts millions of Americans he cannot be trusted no more than Hillary and Obama!!! Get RID of HIM!!!

Like · Reply · Sep 6, 2016 9:09pm



Bob Harrison · Virginia Commonwealth University

How do you feel about the lies thet George Bush and Dick Cheney told us to get us into the Iraq quagmire???

Like · Reply · Sep 6, 2016 9:20pm



Daryl Boaeuf · Dunedin High School

House conservatives want to impeach the IRS director. That would be a big mistake.

By **Editorial Board** September 6

CONGRESS RETURNED from its summer break Tuesday to what may be a brief but contentious pre-election legislative spell. Among the likely arguments: whether Congress should radically change its relationship with the executive branch and hobble the government in the process.

For months, a group of hard-line conservative lawmakers has been pressing to impeach Internal Revenue Service Commissioner John Koskinen, in an effort that may soon come to a head. The context for the campaign against Mr. Koskinen is the continuing GOP obsession with the way the IRS reviewed nonprofit groups' tax-exempt status, following reports that conservative groups were disproportionately scrutinized. The initial reports turned out not to reflect much of a scandal, which was more about bureaucratic obliviousness than purposeful anti-conservative activity.

In any case, Mr. Koskinen was not leading the agency when the non-scandal took place — so lawmakers on a scandal hunt have attacked how he handled the aftermath. They point out that some agency emails were deleted after they were supposed to be saved. No matter that an inspector general investigation found no purposeful wrongdoing. Mr. Koskinen's tormentors fume that he should have told them about the missing emails earlier. The IRS commissioner, they say, offered untruthful testimony before Congress about the matter. Mr. Koskinen has a reasonable response: He did not immediately know the nature or the extent of the gap in the email record, and when he did, he demanded that the agency attempt to recover all it could. Though Mr. Koskinen's pursuers imply that the IRS commissioner has lied to them, they have little evidence indicating this to be the case.

The House Oversight and Government Reform Committee voted to censure Mr. Koskinen in June. The evidence did not warrant even that step. Since then, House conservatives have pushed impeachment. Such a move would be unprecedented. Congress has impeached only one Cabinet member ever, in 1876. Lawmakers have never impeached an executive branch official below the Cabinet rank. Rep. Jason Chaffetz (R-Utah), a leading anti-Koskinen crusader, thinks this record of partisan restraint is a problem. Impeachment, he told us in June, "should be a much more common occurrence."

Wrong. The Founders designed federal impeachment procedures to be used sparingly, erecting barriers to removing executive officers that did not exist in the English system, Michael J. Gerhardt, a University of North Carolina law professor, told the

House Judiciary Committee in June. They also purposely avoided allowing impeachment in cases of mere “maladministration,” raising the bar to the much more serious “high crimes and misdemeanors” standard. “The Founders did not want high-ranking officials in the executive or judicial branches to be subject to impeachment for their mistakes in office,” Mr. Gerhardt testified.

The cumbersome and partisan Senate confirmation process has made it hard enough to fully staff the highest realms of government with competent people. Never-ending, partisan impeachment proceedings against executive officers would make it even harder to keep the essential mechanics of government working. The result would be more bureaucratic bungling, not less.

Read more:

[George F. Will: Impeach the IRS director](#)

[Catherine Rampell: Please don't tell anyone, but tax cheating is about to rise in the U.S.](#)

[The Post's View: The House GOP is unfairly targeting the IRS?](#)



Ohio.com Editorial Editorials

House of expedience, or the hollow argument for impeaching the IRS commissioner

By the Beacon Journal editorial board



Published: September 13, 2016 - 06:24 PM | Updated: September 14, 2016 - 12:34 PM



Before Congress began its summer break, the House Oversight and Government Reform Committee took an extraordinary and irresponsible step. It voted, along party lines, to censure John Koskinen, the IRS commissioner. Now arch conservatives in the Republican caucus want his impeachment, or something that never has happened to a sub-Cabinet official in the country's history.

What awful acts did Koskinen commit? His congressional accusers insist that he impeded inquiries into the way the IRS handled

applications from organizations for 501(c)4 status. These organizations are permitted to raise money for political purposes without having to disclose donors. They expanded rapidly after the Supreme Court's harmful Citizens United ruling. Republicans argue the IRS

targeted the applications of conservative groups for rough treatment (though the agency was ham-handed as much as anything).

The censure resolution contends that Koskinen “offered under oath a series of false and misleading statements utterly lacking in honesty and integrity,” in particular, about the destruction of email relevant to decision-making in the application process.

Recall that the alleged misconduct at the IRS occurred before Koskinen arrived at the agency. President Obama tapped Koskinen to repair things there. The choice made sense, Koskinen having earned a reputation for integrity and effectiveness in public life. He managed, among other things, the federal government’s successful navigation of the Y2K technology challenge. He stepped up to lead a battered Freddie Mac during the housing crisis.

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At the IRS, the independent inspector general found neither nefarious intent in the loss of email nor Koskinen standing in the way. The inspector general actually described him as cooperative. Koskinen devoted resources to recovering many documents, including part of the missing email.

In light of the real record, eight former IRS commissioners, Democrats and Republicans, have expressed strong support for Koskinen. So have 124 law professors, including Carolyn Dessin of the University of Akron. The professors remind that “respect for the IRS fosters the voluntary compliance that is essential for our revenue system to work.” They rightly warn that impeachment would not just set a “dangerous precedent.” It would “deter talented people” from joining to improve the revenue system.

There is no credible case for censuring or impeaching John Koskinen. That especially goes for the argument that Congress must reclaim powers ceded to the executive. Lawmakers have not lost authority. They have failed to use it as conceived at the founding. Instead, the country faces such careless episodes.

The expedience is obvious: Beat up the unpopular IRS, even deny adequate funding, to amplify further the long-playing attack on government and stir base supporters in this election year. One question remains: Will Republican leaders stop them?

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Editorial Don't impeach the IRS commissioner



Internal Revenue Service (IRS) Commissioner John Koskinen testifies on Capitol Hill in Washington in Feb. 2016. (Manuel Balce Ceneta / Associated Press)

By **The Times Editorial Board**

SEPTEMBER 13, 2016, 1:15 PM

The House of Representatives is expected to vote this week on whether to impeach John Koskinen, the commissioner of the Internal Revenue Service. It would be the first impeachment of an executive branch official other than the president since 1876.

The so-called privileged resolution to impeach Koskinen, which bypasses usual House procedure, is a preposterous exercise in ideological politics. Defeating it may require some profiles in courage from the GOP leadership.

The effort to impeach Koskinen, which is being led by the far-right House Freedom Caucus, is the latest installment of a long-running controversy over the alleged “targeting” by the IRS of tea party affiliates and other conservative groups that had sought tax-exempt status. In May 2013, an inspector general in the Treasury Department concluded that between 2010 and 2012, the agency had used “inappropriate criteria” — such as the terms “tea party” and “patriot” — in identifying applications for review.

Koskinen didn't become commissioner until December 2013, but had to deal with the political aftershocks of the controversy, including investigations by outraged Republicans in Congress. Those seeking his impeachment claim that he failed to comply with a subpoena for records associated with the scrutiny of conservative groups and that he provided false and misleading information to Congress.

But the bill of particulars that accompanies the resolution proves, at most, that Koskinen wasn't as attentive to the importance of securing records sought by Congress as he should have been. It's also clear that he misspoke when he told a congressional committee that "every email" associated with Lois Lerner, a former IRS official responsible for tax-exempt groups, had been preserved; in fact, IRS employees in West Virginia had erased as many as 24,000 of her emails. (A Treasury Department inspector general found no evidence that the erasures were a deliberate attempt to destroy evidence.) But inaccurate or incomplete testimony isn't the same as willfully lying to Congress.

In short, there is nothing to suggest that Koskinen is guilty of the "high crimes and misdemeanors" the Constitution cites as grounds for impeachment. And even if the House were to vote to impeach him, there is no chance that the Senate would provide the two-thirds majority necessary for a conviction.

The GOP's ire at the apparent targeting of conservative tax-exempt groups is understandable, but that's not the only thing motivating the Freedom Caucus. Instead, the attempt to impeach Koskinen is a political exercise that can't be divorced from longstanding efforts by conservatives to demonize and defund the IRS. More directly, it's tied to Republicans' apparent determination to stop the IRS from enforcing the law barring political campaigns from masquerading as charities. If the House were to impeach the commissioner — or even censure him — the reputation of that body would suffer and members would be tempted to use the impeachment power to push other pet political causes. The only fair outcome is for the House to refer the resolution to the panel the Freedom Caucus is trying to bypass, the House Judiciary Committee. The resolution is likely to die there, as it should.

Responsible Republicans — including Speaker Paul Ryan and Majority Leader Kevin McCarthy — need to support that action and stand against this abuse of the impeachment power.

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The Opinion Pages | EDITORIAL

Will Speaker Paul Ryan Stand Up to the Freedom Caucus?

By THE EDITORIAL BOARD SEPT. 13, 2016

The leadership of the House speaker, Paul Ryan, is about to be challenged by the latest partisan mischief from ultraconservative Republicans — a meritless and unprecedented attempt to impeach the commissioner of the Internal Revenue Service, John Koskinen.

Members of the House's Freedom Caucus, still angry over an I.R.S. investigation of possible political activity by conservative nonprofit groups in 2013, are demanding that the House impeach Mr. Koskinen even though he was not in charge of the agency when the nonprofits were investigated.

Intent on keeping the issue alive, the House scolds charge that Mr. Koskinen misled Congress and was responsible for emails lost amid subsequent House inquiries. These are charges for which a Treasury Department inspector general's investigation found no evidence; they are being dismissed as non-starters in the Senate, which would ultimately decide the issue.

To impeach the commissioner, his antagonists aim to bypass the House leadership and bring the measure directly to the floor as a privileged resolution. Such a move threatens to set a dangerous new low in congressional politicking.

Should this shabby precedent be established, what sub-cabinet officials and bureaucrats might be singled out next?

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No executive official below president has been impeached since the secretary of war in 1876. Constitutional scholars have told Congress there is no basis here for impeachment. The Constitution specifies “treason, bribery or other high crimes and misdemeanors,” not partisan dissatisfaction with an agency head. Eight former I.R.S. commissioners from Republican and Democratic administrations have defended Mr. Koskinen as “an honest and honorable public servant,” warning that impeachment would do “serious long-term damage to our revenue system.”

But Freedom Caucus members insist they will not back down and will act this month. One of them, Representative John Fleming, a Louisiana Republican, is cynically fund-raising off his fervor: “Friend, I’m fighting back with an impeachment vote against the head of the I.R.S.”

With a Republican meeting on the matter set for this week, Mr. Ryan is caught between the sort of right-wing pressure that ground down his predecessor, John Boehner, and the concerns of less fanatical members, who are wary of looking frivolous before the voters. Having to go on the record to vote against impeachment could leave these Republicans vulnerable to primary challengers from the right. But

the deeper question for Mr. Ryan is why he would allow the Republican House to toy with an embarrassing impeachment issue when it should be attending to a new federal budget and a host of other pressing needs.

The speaker could show some leadership by sending any such floor motion to a quick and quiet death in committee. That is exactly what the Democratic Speaker Nancy Pelosi did in 2008, when Representative Dennis Kucinich of Ohio brought a privileged resolution to the floor to impeach President George W. Bush.

But there is already speculation that Mr. Ryan, fearing the Freedom Caucus, might try to appease it with a measure of censure for the same baseless charges. This would be no less damaging to Mr. Koskinen's reputation — or to the speaker's. It would be another signal that Mr. Ryan remains hostage to his ultraright members.

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A version of this editorial appears in print on September 13, 2016, on page A26 of the New York edition with the headline: Impeach the I.R.S. Commissioner? Really?.

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THE OBSERVATION DECK

Congress' taxing waste

By [TU Editorial Board](#) on September 14, 2016 at 3:29 AM

As Congress returns for a brief, pre-election session, topping the agenda is a compromise plan to keep the government funded through at least the year's end, step up the fight against the Zika virus, and impeach John Koskinen.

Say who?

John Koskinen may not be a household name, but as IRS commissioner he has sure drawn the ire of the archconservative House Freedom Caucus, which is determined to push this extreme action against him. Caucus members contend the commissioner was not fully cooperative in their probe of the IRS' tax-exempt division. The unit was accused of targeting conservative groups suspected of improperly claiming tax-exempt status.

Although Speaker Paul Ryan has expressed little interest in letting the House get bogged down in this political squabble and the chances are practically nil that the Senate would go along with the impeachment, a fight over the measure is likely. The Justice Department had fully investigated the allegation that the IRS had singled out conservative groups for enforcement and brought no criminal charges against the division's head, Lois Lerner, who has since left the agency.

Yet this same far right caucus that rails about how Washington is broken is eager to waste Congress' time on this meaningless, partisan exercise. It has all the substance of vows to eliminate the IRS entirely or reduce tax forms to a postcard.

If the caucus wanted to do something worthwhile in the realm of taxes, perhaps it would look at the altogether valid issue that the IRS was investigating – the abuse of nonprofit status by wealthy people and interests that want to influence our political system anonymously.

Apple was recently ordered by European regulators to pay Ireland \$14.5 billion in taxes and penalties. The company is accused of stashing some \$100 billion in Ireland, taking advantage of favorable tax laws there that make it a haven for Apple and other U.S.-based corporations that do business worldwide like Google, Microsoft and Oracle, which all have large sums in Irish banks. It's estimated about \$2 trillion in foreign profits by U.S. corporations are being tax-sheltered outside the country.

Both Democrats and Republicans in Congress complain that our corporate tax policies discourage companies from bringing money earned overseas back home to invest here. President Barack Obama last year proposed setting the foreign profits tax rate at 14 percent, eventually rising to 19 percent, but the GOP-controlled Congress would not go along. The reform remains stalled.

Ah, but there's time for a political witch hunt, and time to get back to the campaign trail to promise to fix the very government they work mightily to keep broken.

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Impeaching due process

The Times-Tribune · 14 Sep 2016 · ·

House Republicans infamously dragged out for two years an inquiry into the Sept. 11, 2012 terrorist attack on a U.S. diplomatic compound in Benghazi, Libya, for political purposes. The inquiry, the eighth congressional investigation of the matter, was designed to derail former Secretary of State Hillary Clinton's presidential bid. Instead, like the earlier inquirers, it found zero evidence of wrongdoing by anyone.

Now that same caucus has proved to be agile in misusing congressional processes. It plans to railroad an unwise and unprecedented impeachment vote against IRS Commissioner John Koskinen. Rather than dragging out the matter, the House will vote as soon as Thursday on the Koskinen impeachment, without even an evidentiary hearing.

Some House members claim that Mr. Koskinen, who came out of retirement in 2013 after the resignation of his predecessor Lois Lerner, impeded their investigation into whether the IRS targeted for rejection conservative "social welfare" groups seeking tax-exempt status.

The Department of Justice closed a two-year investigation in 2015 without charges.

If the House proceeds on this reckless course, Mr. Koskinen will be the first sub-Cabinet official in U.S. history to face impeachment. And that, in turn, will set a terrible precedent for the resolution of politics and policy disputes. Doing so without even providing Mr. Koskinen an opportunity to defend himself is an even worse precedent. House Speaker Paul Ryan should end this reckless use of impeachment power.

Impeachment won't reform IRS: Our view

The Editorial Board 2:53 p.m. EDT September 14, 2016

House Freedom Caucus is using the wrong instrument



(Photo: Jack Gruber, USA TODAY)

You have to give a band of conservative Republicans known as the House Freedom Caucus credit for one thing: No matter how bad one of their ideas is, they never quit.

Right now, they're battling the Obama administration, House Democrats, their own leadership and Republican moderates to push a futile and absurd effort to impeach IRS Commissioner John Koskinen.

You'd think they'd take the hint that they're on the wrong path, one that could undermine the high constitutional standards for impeachment. But no. Two of the caucus' members have doubled down. Reps. John Fleming, R-La., and Tim Huelskamp, R-Kan., introduced a resolution Tuesday to force an impeachment vote on the House floor. It's their only hope after an [identical resolution has languished](https://www.washingtonpost.com/news/powerpost/wp/2016/09/07/house-republican-leaders-look-to-delay-impeachment-vote-on-koskinen/) (<https://www.washingtonpost.com/news/powerpost/wp/2016/09/07/house-republican-leaders-look-to-delay-impeachment-vote-on-koskinen/>) in the Republican-led Judiciary Committee for nearly a year. House leaders have until Thursday to act.

While the allegations against Koskinen are serious, wiser Republicans know they are not the stuff of impeachment.

In fact, the underlying issue that has driven impeachment goes back years: the agency's misuse of its immense powers to target conservative groups. It occurred before Koskinen was even at the agency.

He was brought in to clean up the mess after revelations in 2013 that the agency's tax-exempt division had singled out conservative organizations, including Tea Party groups, because of their political beliefs. The IRS sent the groups burdensome inquiries and delayed their applications for tax exemption, actions that President Obama acknowledged were "intolerable and inexcusable."



[USA TODAY](http://www.usatoday.com/story/opinion/2016/09/14/impeach-irs-commissioner-john-koskinen-john-fleming-editorials-debates/90333680/)

[Rep. Fleming: Impeach the IRS commissioner](http://www.usatoday.com/story/opinion/2016/09/14/impeach-irs-commissioner-john-koskinen-john-fleming-editorials-debates/90333680/)

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Congress investigated, and high-level officials were forced out. The FBI also investigated but found no criminal wrongdoing, a finding Republicans have found hard to swallow.

Certainly, the public deserves to know exactly what happened, see the relevant records, and be convinced that it won't happen again. Instead, Koskinen's "cleanup" has raised more suspicions. It has been marred by [disappearing emails](http://www.washingtonpost.com/news/politics/elections/2016/09/13/house-conservatives-move-force-vote-impeach-irs-chief/2016/09/13/house-conservatives-move-force-vote-impeach-irs-chief/90310418/) ([/story/news/politics/elections/2016/09/13/house-conservatives-move-force-vote-impeach-irs-chief/90310418/](http://www.washingtonpost.com/news/politics/elections/2016/09/13/house-conservatives-move-force-vote-impeach-irs-chief/2016/09/13/house-conservatives-move-force-vote-impeach-irs-chief/90310418/)) and bungled searches for backups. Federal court rulings excoriated the agency for secrecy.

A few months ago, the agency was still stonewalling. In March, the [6th U.S. Circuit Court of Appeals](http://www.legalinsurrection.com/2016/03/6th-circuit-dings-irs-in-tea-party-targeting-case/) blasted (<http://www.legalinsurrection.com/2016/03/6th-circuit-dings-irs-in-tea-party-targeting-case/>) the IRS for resisting "at every turn" a judge's orders to disclose a list of the groups targeted. And just last month, a federal appeals court in the nation's capital revived a lawsuit against the IRS by conservative groups that had been targeted. A three-judge panel cited the agency's own admission that two groups still had not gotten their tax exemption, years after seeking it. The [IRS' excuse](https://www.cadc.uscourts.gov/internet/opinions.nsf/E780A4723CBF0726852580060052C212/%24file/15-5013.pdf) (<https://www.cadc.uscourts.gov/internet/opinions.nsf/E780A4723CBF0726852580060052C212/%24file/15-5013.pdf>)? Because the groups had sued the agency.

Republicans have good reason to want the IRS to come clean and release any documents that shed light on what happened. But impeachment of a man who wasn't even there when the scandal occurred? No.

In the nation's history, impeachment has been used [against](https://www.fas.org/sqp/crs/misc/R44260.pdf) (<https://www.fas.org/sqp/crs/misc/R44260.pdf>) two presidents, a secretary of war in 1876 and 15 federal judges. Federal judges hold life tenure and cannot be removed except by impeachment. Koskinen's term will end in November 2017.

Impeachment is not a tool to be used for political payback or to raise [campaign cash \(http://thehill.com/policy/finance/294838-gop-lawmaker-campaigning-on-efforts-to-impeach-irs-chief\)](http://thehill.com/policy/finance/294838-gop-lawmaker-campaigning-on-efforts-to-impeach-irs-chief), as Fleming recently did in an email to voters for his Louisiana Senate race.

There are plenty of things the IRS needs — more money to provide better customer service and combat ID fraud, a simpler tax code to administer, and reforms to ensure it will never again target anybody for political beliefs. Republicans would do better to turn to the serious work of governing than to press a frivolous impeachment vote.

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OPINION | REVIEW & OUTLOOK

The Impeachment Distraction

Koskinen and the IRS deserve rebuke, but not if it costs the Senate.



John Koskinen before the House Oversight and Government Reform Committee in Washington, D.C. on June 23, 2014.

PHOTO: EUROPEAN PRESSPHOTO AGENCY

Sept. 14, 2016 7:03 p.m. ET

House Speaker Paul Ryan has managed to unite his fractious GOP caucus around some common campaign goals. So it's a pity that two months from an election some House Members are driving an issue that could cost Republicans control of the Senate.

Louisiana Rep. John Fleming on Tuesday moved on a privileged resolution to force the House to vote as soon as Thursday to impeach IRS Commissioner John Koskinen. The IRS chief has earned public opprobrium, but the timing of this effort could boomerang and end up making the IRS less accountable.

These columns have been out front in documenting Mr. Koskinen's failures after he promised to clean up the IRS following its political targeting of conservative nonprofits. Mr. Koskinen has failed to be candid with Congress and defied subpoenas. Documents requested by Congress were destroyed on his watch. He's done nothing to reform the agency and he has supported a new draft regulation, now in temporary abeyance, that would reinforce the agency's political vetting.

The question is whether impeachment is the right remedy at the current political moment. The case for it is that Congress needs to reassert its own powers against a runaway executive branch. President Obama has diminished the power of the purse and won't prosecute contempt citations against witnesses who refuse to testify on Capitol Hill. Impeachment is about all Congress has left.

The problem is that a trial is doomed to fail in the Senate, where a two-thirds vote is required to convict. There are differing views on whether a House impeachment vote triggers an automatic Senate trial, but if it does this could require vulnerable GOP incumbents to stay in Washington at the height of the campaign. This would be a gift to Democrats trying to regain the majority.

Senate Democrats might insist on dragging out a trial, even blocking a budget vote as a way to shut down the government after its funding runs out Sept. 30. Most voters have no idea who Mr. Koskinen is, and they are likely to consider impeachment this close to Election Day to be a political stunt and distraction.

No doubt many House Members genuinely believe Mr. Koskinen deserves impeachment, but other Republicans have legitimate doubts that his offenses rise to the level of "high crimes and misdemeanors" mentioned in the Constitution. An impeachment trial now will divide Republicans while uniting Democrats. Why take the risk when Mr. Koskinen is leaving office in a mere four months?

Congress needs to think seriously about how to reassert its powers no matter who wins the White House. But the reality is that a Senate Democratic majority would make that task impossible. Republicans should focus on re-electing their majorities in Congress as a check on the next President, instead of making self-defeating political gestures.

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July 8, 2016

The Honorable Robert Goodlatte
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515The Honorable John Conyers, Jr.
Ranking Member
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Goodlatte and Ranking Member Conyers:

We write on behalf of Internal Revenue Service Commissioner John Koskinen regarding resolutions pending before your Committee to impeach and censure him. These resolutions are extraordinary measures of constitutional and historical significance. One proposes to impeach a sub-Cabinet official for the first time in the history of our Republic. The other asks the House to censure an Executive Branch official for the first time since the 19th century. Either approach would have a tremendous and deleterious impact on the administration of our Nation's revenue system and the reputation of a long-time and dedicated public servant. Before your Committee or the House takes any further actions on these historic resolutions, we respectfully request that the Committee afford Commissioner Koskinen the basic procedural rights that it has previously granted to other Executive Branch officials. Departing from those traditions now would irreparably damage the credibility of the House, set a dangerous precedent, and diminish the historical role traditionally performed by this Committee.

The proposed resolutions would place an indelible stain on Commissioner Koskinen's reputation, potentially deprive him of retirement benefits that he earned during his years of government service, and discourage others from serving our country in tough circumstances. Denying Commissioner Koskinen a full opportunity to examine the evidence against him and be heard before a House vote would leave the Members of the House without information about the merits and consequences of these measures, and would violate the principles of due process that are enshrined in our Constitution and have long been honored by you and your predecessors. Rather than abandoning its traditions, the Committee should insist that Commissioner Koskinen be afforded basic rights to ensure that the House's decision is based on an accurate and balanced legal and factual record.

We have been particularly troubled by press reports suggesting that some Members of the House may seek to deprive the Committee of its jurisdiction and Commissioner Koskinen of a fair process by bringing the impeachment proposal directly to the House floor as a privileged resolution. The House has "always examined the charges by its own committee before it has

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voted to impeach.”¹ In modern times, the Committee has “permitt[ed] the accused to explain, present witnesses, cross examine, and be represented by counsel.”² Consistent with the Committee’s past practice, as the Chairman described it, any vote on articles of impeachment should be “the culmination of an exhaustive investigation” by the Committee that will include “reviewing the records of past proceedings, rooting out new evidence that was never considered in previous investigations, conducting numerous interviews and depositions with firsthand witnesses and conducting hearings to take the testimony of firsthand witness and constitutional scholars.”³ Abandoning these practices to rush an impeachment vote based on a thin, one-sided record would represent a sharp departure from the House’s traditions and a rejection of constitutional principles and the dignity the House has sought to uphold under its current leadership.

Due process is particularly important here because the resolutions contain clear errors of fact, misleading statements, and baseless conclusions. To cite just a few obvious examples, the resolutions distort the timeline by claiming Commissioner Koskinen made statements on one date that he actually made on another, and distort his words through selective quotations suggesting that he meant something different than what he actually said. If Commissioner Koskinen were permitted to provide you with information and respond to the claims against him, he could correct the record and rebut the flawed premises underlying the resolutions.

Similarly, Commissioner Koskinen deserves the opportunity to respond to the allegations against him so that he can rebut the irresponsible and demonstrably false claims that he knowingly provided untruthful testimony to Congress. Commissioner Koskinen is an honorable, well-respected leader who has sought to be forthright on the 35 occasions he has testified to Congress. If given an opportunity to present a defense, we would provide evidence that all of Commissioner Koskinen’s statements cited in the resolutions were good faith representations of his knowledge at the time that they were made. When some later proved to be mistaken, Commissioner Koskinen readily acknowledged as much.

Due process is also critical because serious questions surround the constitutionality of both resolutions. As the nation’s leading scholar on impeachment testified to the Committee last month, it would set a “dangerous precedent for the House to adopt a lower standard of impeachment than the Founders intended and the House has ever used before.” The Committee should be particularly wary of abandoning its traditional process when considering a resolution that proposes to stretch the definition of “high crimes and misdemeanors” beyond its historical limits.

¹ Jefferson’s Manual, § 606.

² *Id.*

³ https://judiciary.house.gov/_files/hearings/transcripts/transcript100127.pdf (Statement of Rep. Goodlatte).

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As to censure, this Committee has previously concluded that “censure as a shaming punishment by the legislature is precluded by the Constitution,” both because it “undermine[s] the separation of powers” and because it “violate[s] the Constitution’s prohibition on Bills of Attainder.”⁴ Furthermore, one of the primary sponsors of the censure resolution has repeatedly asserted that it requires Commissioner Koskinen to forfeit his vested government pension.⁵ If he is right, the resolution would be an unconstitutional Bill of Attainder and would violate the bicameralism and presentment requirements of Article I, Section 7 of the Constitution. If he is wrong, the House should not vote to censure an Executive Branch official for alleged misstatements when the effect of the resolution itself has been misstated by its sponsor.

We respectfully request that the Committee, if inclined to permit these resolutions to advance, do so only after full, fair, and detailed consideration.⁶ The House Oversight and Government Reform Committee approved the censure resolution without ever offering Commissioner Koskinen the opportunity to respond to the charges against him or to see the secret transcripts of interviews they claim support their allegations (but which we believe in many cases actually refute those allegations). We hope that your Committee, which has historically overseen the House’s constitutional prerogatives, would not permit that prior proceeding—which lacked any of the due process typically afforded by this Committee—to displace your Committee’s role.

We would welcome the opportunity to provide you with evidence for your review and to identify witnesses whose testimony would directly contradict the resolutions’ factual assertions and analyze the constitutional questions they raise. We can demonstrate the ways in which Commissioner Koskinen has been transparent with and responsive to Congress, and describe the sweeping actions he has taken to address the mistakes that gave rise to these controversies – conduct that ended long before he arrived at the IRS. Commissioner Koskinen would also be personally available to express his regret for past statements that were inadvertently incorrect or misunderstood and to explain his actions to address errors and misunderstandings during subsequent proceedings. At a minimum, we would like an opportunity to meet with you in person to discuss a potential process that would honor the House’s best traditions and allow Members to have an accurate, balanced, and complete set of facts before voting on such weighty matters.

⁴ H.R. Rep. No. 105-830, at 137 (1998).

⁵ Press Release, “Chaffetz Introduces Censure Resolution for IRS Commissioner,” House Committee on Oversight and Government Reform (May 18, 2016); Transcript, Full Committee Business Meeting, House Committee on Oversight and Government Reform (June 15, 2016).

⁶ Commissioner Koskinen has expressed his willingness to appear to testify regarding the claims against him from the outset of the Committee’s examination of these issues. He submitted to the Committee an initial written statement summarizing why the allegations against him lack merit, but some Members of the Committee regrettably objected to including that statement in the record.

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The fairness of these proceedings will affect not only Commissioner Koskinen, but all women and men who dedicate themselves to public service. As your Committee considers whether to approve these historic actions—including whether to grant the due process that has customarily been provided—we hope that you will be mindful of the precedent that will be set. If your Committee chooses to allow these resolutions to proceed without any factual investigation or opportunity for Commissioner Koskinen to challenge the allegations against him, it will further discourage qualified individuals from taking on important responsibilities on behalf of our country. There will also inevitably be an adverse impact on the Nation's revenue system, as described in more depth by the attached letter from nearly all of the Nation's living former IRS Commissioners.

We thank you for the seriousness with which your Committee has taken its responsibilities with respect to this matter to date. We do not make this request lightly, nor do we intend to impugn the sincerity or motives of those who have sponsored or already expressed support for the resolutions. As you further consider how to address these resolutions, we simply ask that you do not allow them to proceed on an incomplete and therefore misleading record. In order to ensure that the House's consideration of the resolutions is not tarnished by haste or bias, we respectfully request that Commissioner Koskinen first be given the opportunity to present his side of the story. Upon a full examination of the facts, we are confident you will find that Commissioner Koskinen's dedicated service during a period of extraordinary scrutiny at the IRS does not merit the unprecedented actions under consideration.

Sincerely,



Howard M. Shapiro
Reginald J. Brown
Matthew T. Martens

Enclosure

cc: The Honorable Paul Ryan, Speaker of the House of Representatives
The Honorable Nancy Pelosi, Minority Leader of the House of Representatives

Reginald J. Brown

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September 8, 2016

The Honorable Robert Goodlatte
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

The Honorable John Conyers, Jr.
Ranking Member
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Goodlatte and Ranking Member Conyers:

As you may know, IRS Commissioner John Koskinen yesterday spoke with two gatherings of your colleagues as an invited guest regarding the effort by some Members of Congress to impeach him via a privileged resolution and direct floor vote. During those meetings, Commissioner Koskinen again expressed his deep regret regarding this matter and his commitment to implement reforms and restore confidence in the impartiality of the IRS. Notwithstanding the substance of the discussions, it has come to our attention that some Members have suggested that Commissioner Koskinen may be trying to advocate on his own behalf while evading the formal committee process that is regular order for impeachment proceedings. Nothing could be further from the truth.

If this matter is to proceed further, Commissioner Koskinen has been and is willing to participate in this Committee's traditional process for investigating the potential impeachment of executive branch officials, including submitting testimony and answering questions under oath. On May 23, 2016, Commissioner Koskinen submitted a written statement to this Committee and said that he "remain[ed] willing to appear before the Committee in the future." He also expressed his hope that if "the Committee choose[s] to undertake further steps ... it will do so in a manner consistent with the House's longstanding concern for, and provision of ... due process." On July 8, 2016, we noted that this Committee's traditional process for impeachment matters has "'permitt[ed] the accused to explain, present witnesses, cross examine, and be represented by counsel.'"¹ We offered, in such a process, to "provide you with evidence for your review and ... identify witnesses whose testimony would directly contradict the resolutions' factual assertions and analyze the constitutional questions they raise." We also reiterated that "Commissioner Koskinen would ... be personally available ... to explain his actions."

Regular order and due process—including specific, evidence-based findings of fact—are particularly important here because the allegations against Commissioner Koskinen seem to change by the day. Just in the last 48 hours, leading impeachment advocates have leveled

¹ Jefferson's Manual, § 606.

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several charges that conflict with the findings of lengthy, probing investigations conducted by nonpartisan professionals.

For example, one leading impeachment advocate has alleged that Commissioner Koskinen “ordered 24,000 emails erased before Congress could review them.” However, the Bush-appointed Treasury Inspector General for Tax Administration spent a year investigating data losses at the IRS. In a June 30, 2015 report, he concluded: “No evidence was uncovered that the IRS employees involved intended to destroy data on the tapes or the hard drives in order to keep this information from Congress, the DOJ or TIGTA. No evidence was uncovered that any IRS employees had been directed to destroy or hide information from Congress, the DOJ, or TIGTA.”² TIGTA spoke with many IRS employees, including Commissioner Koskinen directly in the course of that inquiry, and no evidence whatsoever exists to suggest that he ordered anyone to erase emails. The Justice Department, after its own probing investigation, similarly concluded: “[O]ur investigation revealed no evidence that the IRS’s document collection and retention problems ... were caused by a deliberate attempt to conceal or destroy information.”³ These facts may not be known to some Members, however, as neither the Inspector General nor the Justice Department have as of yet been asked to testify or provide evidence in impeachment proceedings regarding their findings.

Similarly, another leading impeachment advocate suggested yesterday that Commissioner Koskinen had visited your colleagues “to defend himself and *his* targeting of conservative groups.” As you know, Commissioner Koskinen joined the IRS *after* the alleged targeting had stopped. He has led the adoption of bipartisan reforms to ensure that something like this never happens again. Commissioner Koskinen did not target any groups.

Should this matter proceed, there is a clear need for regular order and due process so that your colleagues have the benefit of an *accurate record* relating to specific impeachment charges before they cast any votes. All that we seek is the use of traditional processes and standards. We, and Commissioner Koskinen, remain willing to participate respectfully and fully in the process called for by regular order.

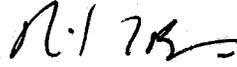
² Treasury Inspector General for Tax Administration Report of Investigation (“TIGTA Report”) 5 (June 30, 2015), available at <https://www.judicialwatch.org/wp-content/uploads/2015/07/TIGTA-Report-6-30-2015.pdf>.

³ Letter from Assistant Attorney General Peter J. Kadzik to the Hon. Jason Chaffetz and the Hon. Elijah Cummings (Oct. 23, 2015), available at [http://democrats.oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2015-10-23%20DOJ%20to%20HOCR%20\(IRS\)%20-%20Chmn%20Chaffetz%20RM%20Cummings.pdf](http://democrats.oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2015-10-23%20DOJ%20to%20HOCR%20(IRS)%20-%20Chmn%20Chaffetz%20RM%20Cummings.pdf).

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Best regards,



Reginald J. Brown
Matthew T. Martens
Howard M. Shapiro

Enclosure

CC: The Honorable Paul Ryan, Speaker of the House of Representatives
The Honorable Nancy Pelosi, Minority Leader of the House of Representatives

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September 16, 2016

The Honorable Robert Goodlatte
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

The Honorable John Conyers, Jr.
Ranking Member
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Goodlatte and Ranking Member Conyers:

As you know, Commissioner Koskinen deeply respects the work and authority of the Committee and has agreed to testify under oath on Wednesday, September 21, as requested. He hopes to address some of the confusion regarding basic facts and to explain the reforms that the IRS has implemented during his tenure to address unacceptable practices that took place before he arrived at the agency. We appreciate the professionalism and substantive nature of the Committee's inquiry to date under your leadership and hope that you will find the substance and tone of Commissioner Koskinen's testimony constructive and respectful as well.

We are concerned, however, that some may believe that Commissioner Koskinen's voluntary appearance at this hearing is an appropriate substitute for regular order and the traditional approach to addressing impeachment proceedings. As you know, the scheduled hearing, with an opening statement and timed rounds of Member-directed questions on any topic of their choosing, does not reflect the full range of deliberate and balanced procedures that this Committee has developed to ensure fairness and legitimacy in an actual impeachment inquiry.¹ Those procedures include the right to make opening and closing statements, the right to call and cross-examine witnesses, the right to present evidence, the right to examine all evidence obtained by the Committee, the right to make evidentiary objections for the record, the right to be formally and directly represented in proceedings by counsel, and the right to respond to all evidence cited by the Committee.²

Should the Committee proceed to a formal impeachment inquiry, we would expect to be allowed to exercise those rights to present a robust legal and factual defense to the many false allegations that have been lodged against Commissioner Koskinen. Testimony under oath from a single witness—before he has even been allowed to see any evidence against him and with no

¹ See, e.g., Jefferson's Manual § 606; H. Rep. 111-427 at 11-12 (2010); H. Rep. 111-159 at 13-19 (2010).

² See Jefferson's Manual § 606; H. Rep. 111-427 at 11-12 (2010); H. Rep. 111-159 at 13-19 (2010); III Deschler's Precedents of the U.S. House of Representatives 14 § 6.5.

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right to present corroborating evidence to address false or mistaken allegations—is no substitute. Indeed a process of testimony followed immediately by a floor vote, with no established standards, validated evidence, or findings of fact would be more akin to a foreign show trial than the solemn process contemplated by the Framers and generations of Congressional leaders, including Members of this Committee.

While we have no reason to believe that you would agree with them, we are troubled by the statements of some who appear to be unaware or dismissive of this Committee's established traditions, which are designed to ensure that the extraordinary power of constitutional impeachment is exercised on the basis of solid facts rather than sound bites. Those observers seem to believe that, by allowing Commissioner Koskinen to say a few words and respond to questions under oath, the House can, consistent with regular order, forge ahead to vote on the proposed articles of impeachment without any factual findings based on a formal evidentiary record. For example, a statement was issued yesterday claiming that "the House Judiciary Committee will finally hold impeachment proceedings" and that the hearing will "remove any lingering excuses for those who have been hesitant to proceed." That position, which treats this Committee's traditions as mere excuses, would represent a rejection of time-honored constitutional principles and the dignity the House has consistently sought to uphold under its current leadership.

As noted in Jefferson's Manual, in modern times, committees conducting an impeachment inquiry have "permitt[ed] the accused to explain, present witnesses, cross examine ... and be represented by counsel."³ In its most recent impeachment of an executive branch official, the House extended such rights to then-President Clinton, allowing his counsel to present exculpatory information, call his own witnesses, and cross-examine others.⁴ In the next prior impeachment of an executive branch official, the House in 1874 allowed Secretary Belknap the "opportunity to explain, present witnesses, and cross-examine witnesses."⁵ During the most recent impeachment inquiries of Article III judges, this Committee in 2010 allowed the accused to make evidentiary submissions, call witnesses, and cross-examine others.⁶

Recent leaders of this Committee have embraced that tradition. During the Clinton impeachment, Chairman Henry Hyde insisted on adopting due process rights to "ensure that the impeachment inquiry is fair."⁷ He explained that "we must constantly strive to be fair, thorough,

³ Jefferson's Manual § 606.

⁴ H. Rep. 105-830, p. 126-127.

⁵ III Hinds' Precedents of the U.S. House of Representatives § 2445.

⁶ H. Rep. 111-159, p. 13-19; H. Rep. 111-427, p. 11-12.

⁷ H.R. Rep. 105-795, p. 25-26.

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and expeditious in all that we do.”⁸ Speaking in 2006, former Chairman Jim Sensenbrenner noted that “[o]nly after the House Judiciary Committee has conducted a fair, thorough, and detailed investigation, will Committee members be able to consider whether Articles of Impeachment might be warranted.”⁹ And the Chairman has noted that an impeachment vote by the Committee in 2010 was “the culmination of an exhaustive investigation” by the Committee that included “reviewing the records of past proceedings, rooting out new evidence that was never considered in previous investigations, conducting numerous interviews and depositions with firsthand witnesses and conducting hearings to take the testimony of firsthand witnesses and constitutional scholars.”¹⁰ Before voting on an impeachment that is literally unprecedented, similar care and diligence are surely warranted. It is also necessary before any vote on censure, assuming such a measure is even constitutional.

Even though we assume Wednesday’s hearing is only the last of three in your preliminary inquiry, we believe it would be helpful if consideration were given to providing both the staff of the Judiciary Committee and counsel for the Commissioner immediate access to the transcripts of all of the interviews conducted by the House Oversight and Government Reform Committee during its investigation of the IRS’s use of improper selection criteria before Commissioner Koskinen’s tenure. We understand these transcripts to be among the primary materials serving as a basis for a number of the allegations against Commissioner Koskinen. Access to them could enable Commissioner Koskinen to provide more helpful information to the Committee at Wednesday’s hearing. They are also necessary to answer basic questions about the scope and depth of the investigation, such as what witnesses were interviewed, what questions were asked, what leads were followed, and whether all relevant information was disclosed. We would, of course, agree to any appropriate confidentiality protocols. We also understand that it may ultimately prove too difficult to provide access to these materials until a later date given the short period remaining before the hearing.

We hope that, following Wednesday’s hearing, this Committee will decide against reporting to the House floor a resolution authorizing a formal impeachment proceeding. However, should the Committee take that step, we are fully prepared to assist the Committee in developing a solid and vetted factual and legal record on which Members can rely in exercising their constitutional responsibility. After reviewing whatever documentary evidence the Committee gathers, we would expect to be allowed to make objections, cross-examine each witness that the resolution’s proponents put forward, and call our own witnesses to expose what we believe are blatant factual errors in the resolution. We would also identify the proposed standards for impeachment in the resolution that are inconsistent with the Constitution’s

⁸ H.R. Rep. 105-830, p. 149.

⁹ Statement of F. James Sensenbrenner, Jr., Introduction of H. Res. 916, July 17, 2006.

¹⁰ Statement of Rep. Goodlatte, House Judiciary Committee Business Meeting, January 27, 2010.

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commands. We are confident that a complete record would show that the impeachment of Commissioner Koskinen is wholly unwarranted.

Sincerely,

A handwritten signature in black ink that reads "Howard M. Shapiro". The signature is written in a cursive style with a large, stylized "H" and "S".

Reginald J. Brown
Matthew T. Martens
Howard M. Shapiro

CC: The Honorable Paul Ryan, Speaker of the House of Representatives
The Honorable Nancy Pelosi, Minority Leader of the House of Representatives