# U.S. House of Representatives
## Committee on the Judiciary
Washington, DC 20515–6216
One Hundred Sixteenth Congress

November 14, 2019

The Honorable Jerrold Nadler
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Nadler,

On June 22, 2016, during hearings exploring the potential impeachment of IRS Commissioner Koskinen, you said: "The power of impeachment is a solemn responsibility, assigned to the House by the Constitution, and to this Committee by our peers. That responsibility demands a rigorous level of due process."[1] Now that Congress is officially engaged in a so-called "impeachment inquiry," it is incumbent upon you and the Democratic caucus to be faithful to your prior statement and to prioritize due process. In light of this, I hope that you join me in demanding the House take the same steps as have historically been taken to ensure fairness throughout impeachment proceedings.

### I. Participation of President's Counsel in Impeachment Proceedings

The rules of the current "impeachment inquiry" allow the President and his counsel to participate only in impeachment hearings held by the Judiciary Committee, but not in hearings or interviews held by the House Permanent Select Committee on Intelligence (HPSCI).[2] Permitting the President to participate only in Judiciary Committee activities is a thinly-veiled attempt by Speaker Nancy Pelosi and Chairman Adam Schiff to erect a façade of fairness, while in practice denying the President and his counsel the protections and involvement afforded, historically, to every other president subject to impeachment proceedings.

Historically, impeachment proceedings have been conducted by the Judiciary Committee—not HPSCI.[3] This includes proceedings during the information-gathering stage.[4] The President and

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[1] *Examining the Allegations of Misconduct Against IRS Commissioner John Koskinen (Part II): Hearing Before the H. Comm. on the Judiciary*, 114th Cong. 3 (2016) (statement of Rep. Jerrold Nadler). With Commissioner Koskinen, as is the case here, the main fact investigation into possible impeachable conduct was performed by another Committee of the House.

[2] *Id.*

[3] The House looks "to the Judiciary Committee to conduct this 'inquest,' or information-gathering stage of the impeachment process." Todd Garvey, "Congressional Access to Information in an Impeachment Investigation," CRS, at n.4 (October 25, 2019) (Citing CHARLES W. JOHNSON ET AL., HOUSE PRACTICE: A GUIDE TO THE RULES, PRECEDENTS, AND PRACTICE OF THE HOUSE, ch. 27 § 6, at 615 (2017)).

[4] *Id.*

his counsel have always been invited to participate in impeachment proceedings from the outset. In the cases of Presidents Nixon and Clinton, the House adopted resolutions to commence impeachment proceedings and gave sole jurisdiction to the Judiciary Committee.[5] In both instances, the President and his counsel were afforded the chance to participate in all substantive hearings.[6] That has not happened here.

So far, the Judiciary Committee has been excluded from all closed-door witness interviews during these impeachment proceedings. Judiciary Committee Members and staff are also prohibited from participating in HPSCI's current spate of public hearings.[7] If this trend continues and the Judiciary Committee remains sidelined, the President and his counsel will be denied the procedural protections and fairness afforded by Congress to presidents in prior impeachment inquiries. The accused will not be able to confront his potential accusers, cross-examine witnesses, or test the evidence. The process will be devoid of fundamental fairness.

## II. Holding Public Hearings in the Judiciary Committee

Although the current impeachment procedures adopted by the House allow the Judiciary Committee to hold hearings, they do not require the Committee to do so.[8] The rules require only that the Judiciary Committee receive a presentation from someone on HPSCI's staff. Mr. Chairman, will the Judiciary Committee's involvement in the impeachment of a sitting president be limited to hearing from a member of Chairman Schiff's staff?

If the answer to this question is yes, then this Committee's historical role and importance has been drastically undermined under your leadership. But even more significant than the watering down of this Committee's historical importance would be the complete lack of procedural fairness afforded to the President and, ultimately, to the American electorate.

If the answer to the question is no, what exactly will this Committee's role be during the second phase of this unprecedented "impeachment inquiry"? If relevant fact witnesses are going to be called to testify privately and publicly before HPSCI, as appears to be the case, will you recall witnesses to testify, some for a third time, before our Committee?[9] If the answer is no, then again House Democrats are denying the President procedural protections rooted in our historical traditions. If this Committee will not hear from fact witnesses, will we again be relegated simply to hearing the opinions of cable news pundits and partisan academics?[10]

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[5] H. Res. 803, 93d Cong. (1974) (Nixon); H. Res. 581, 105th Cong. (1998) (Clinton).
[6] *See Impeachment of Richard M. Nixon, President of the United States*, H. R. Rept. 91-1305 (1974); *Investigatory Powers of the Committee on the Judiciary with Respect to its Impeachment Inquiry*, H.R. Rept. 105-795, 105th Cong. 24 (1998); H.R. Rept. 105-845, 105th Cong. 26 (1998).
[7] Press Release "House Intelligence Committee Announces First Week of Open Hearings With William Taylor, George Kent and Marie Yovanovitch, Nov. 6, 2019, https://intelligence.house.gov/news/documentsingle.aspx?DocumentID=792.
[8] H. Res. 660.

Thus far, the House has completely failed to deliver on your 2016 promise to provide "rigorous due process." Indeed, Chairman Schiff is proceeding without regard to fairness or historical precedent. For the first time in modern history, an impeachment of a President has been initiated by a single party and conducted outside of the Judiciary Committee. What concerns me most, however, is the extent to which you seem willing to allow Chairman Schiff to strip the accused of deep-rooted principles of procedural fairness by prohibiting the duly-elected President from participating in the proceedings in any meaningful way, and thereby denying due process to the American electorate. I urge you to promptly rectify these failures.

Sincerely,

Doug Collins
Ranking Member