

RICHARD BRIFFAULT
Joseph P. Chamberlain
Professor of Legislation

SCHOOL OF LAW
[REDACTED]
[REDACTED]
[REDACTED]

June 20, 2016

Committee on Oversight and Government Reform
United States House of Representatives

To the Members of the Committee:

Can a House Resolution, specifically H.Res. 737 as passed by the Committee on Oversight and Government Reform, require Commissioner of Internal Revenue John A. Koskinen to “forfeit all rights to any annuity for which he is eligible under chapter 83 or chapter 84 of title 5, United States Code?”

The short answer is “no” – a House Resolution cannot have any such effect on the property rights of a private individual. House Resolutions can affect the rules and operations of the House and can express the “sense” of the House concerning a subject of interest to the House. The provision of H.Res. 737 concerning Commissioner Koskinen’s pension is just such a “sense of the House” statement. It cannot bind persons or property outside the House. That would require a law, which, as the Constitution provides, Art. I, sec. 7, cl. 2, would require the approval of both the Senate and the House, and presentation to the President. H.Res. 737, even if passed by the full House, would not be a law and, so, would have no effect on Commissioner Koskinen’s government benefits.

In addition, even if the annuity forfeiture provision were to be enacted as a law it could be challenged as a bill of attainder, in violation of Art. I, sec. 9, cl. 3, of the Constitution. In *United States v. Lovett*, 328 U.S. 303 (1946), the Supreme Court ruled that a law that purported to deny any salary or compensation to certain named government employees was an unconstitutional bill of attainder. The Court determined that “legislative acts, no matter what their form, that apply . . . to named individuals . . . in such a way as to inflict punishment on them without a judicial trial are bills of attainder prohibited by the Constitution.” *Id.* at 315. As the Court explained, “Those who wrote our Constitution well knew the danger inherent in special legislative acts which take away the life, liberty, or property of particular named persons, because the legislature thinks them guilty of conduct which deserves punishment. They intended to safeguard the people of this country from punishment without trial by duly constituted courts.” *Id.* at 317. “When our Constitution and Bill of Rights were written, our ancestors had ample reason to know that legislative trials and punishments were too dangerous to liberty to exist in the nation of free men they envisioned. And so they proscribed bills of attainder.” *Id.* at 318.

Sincerely,

