

Dear Colleague,

Each one of us stood in the well of our respective chamber, raised our right hand, placed our left hand on the Bible, and swore a solemn oath to support and defend the Constitution of the United States. Today, we have an opportunity to affirm that oath at a crucial point in American history.

My lawsuit to overturn an executive branch rule that unconstitutionally amends a federal law offers a landmark opportunity to help re-establish the balance between the executive and legislative branches of government.

As George Washington Law School Professor Jonathan Turley eloquently stated in testimonies before the House Judiciary Committee (emphasis added):

*“We are in the midst of a constitutional crisis with sweeping implications for our system of government. There has been a massive gravitational shift of authority to the Executive Branch that threatens the stability and functionality of our tripartite system...”*

*“I believe that President Barack Obama has crossed the constitutional line between discretionary enforcement and defiance of federal law . . . . The division of governmental powers is designed to protect liberty by preventing the abusive concentration of power. All citizens – **Democratic or Republican or Independent** – should consider the inherent danger presented by a President who can unilaterally suspend laws as a matter of presidential license...”*

*“The separation of powers is the very foundation for our system . . . . It is that system that produces laws that can be truly said to represent the wishes of the majority of Americans. It is also the very thing that gives a president the authority to govern in the name of all Americans...”*

*“The circumvention of the legislative process not only undermines the authority of this branch but destabilizes the tripartite system as a whole. If President Obama can achieve the same result of legislation by executive fiat, future presidents could do the same in negating environmental or discrimination or consumer protection laws. Such practices further invest the Administrative State with a degree of insularity and independence that poses an obvious danger to liberty interests protected by divided government. This danger is made all the more menacing by **the clear assumption by the Executive Branch that artificially narrow standing rules will insulate the orders from judicial scrutiny and relief...**”*

*“The current crisis is the result not simply of executive overreach but also of judicial avoidance in the face of that growing encroachment. **The courts are now absent—without constitutional leave—in the midst of one of the most fundamental conflicts in the history of our country.** That will make corrective measures all the more important (and all the more difficult) for Congress...”*

*“While checks and balances exist, **the protection of the structural integrity of the system (as with federalism guarantees) rests with the courts as neutral arbiters.** In these cases, the courts are not asked to resolve political questions but are instead asked to resolve conflicts regarding the process through which such questions are resolved. **The removal of the federal courts from the equation in these conflicts has placed even greater stress on the system of checks and***

***balances. However, the measures available to Congress are no substitute for judicial review, particularly given the changes in our federal system...***

*"We are now at the constitutional tipping point for our system. If balance is to be reestablished, it must begin before this President leaves office and that will likely require **every** possible means to reassert legislative authority. No one in our system can "go it alone"—not Congress, not the courts, and not the President. We are stuck with each other in a system of shared powers—for better or worse. We may deadlock or even despise each other. The Framers clearly foresaw such periods. They lived in such a period. Whatever problems we are facing today in politics, they are problems of our own making. They should not be used to take from future generations a system that has safeguarded our freedoms for over 250 years."*

I quote extensively from Professor Turley's testimony because I cannot make these critical points any better. Even though Professor Turley and I do not share the same political views, we do share the deeply held belief that it is well past time for Congress to defend its powers and for the courts to help re-establish the vital balance between our three branches of government.

Twelve senators and 26 House members filed an amicus brief in support of my lawsuit. I am writing to urge you to uphold your oath by taking this opportunity to defend the Constitution by joining a letter to be filed with the court in support of that brief.